Public Utilities

FORTNIGHTLY

April 15, 1943

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

Reasonable Vanity

"YOU GOTTA EXCUSE NICK'S VANITY . . . HE NEVER HAD ANY EYEBROWS BEFORE WE GOT TH' NEW EQUIPMENT!"

The lasting, attractive finish not only reflects Nick's countenance but also is an outward indication of fine workmanship throughout I-T-E switchgear.

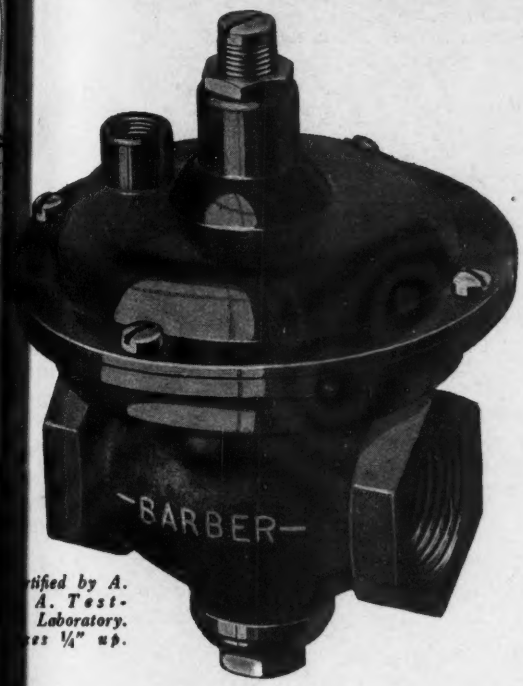
I-T-E

AIR SWITCHGEAR

IMMERSED IN AIR • ENCASED IN STEEL

I-T-E

CIRCUIT BREAKER CO., PHILADELPHIA, PA.



rtified by A. A. Test- Laboratory. es ¼" up.

Barber Regulators are Vital for Gas Saving

RIGID economy on every type of gas fuel is a necessary part of the war program. Every public service corporation can help to promote maximum efficiency in the use of gas by advising the installation of reliable pressure regulators. You can safely recommend to your customers the use of Barber Regulators, which have long been recognized as mechanically perfect, highly dependable in action, and certain to give finer performance and greater fuel economy from any gas appliance.

The facilities of our company are now largely engaged upon essential war equipment. For those restricted purposes for which the sale of our regular products is permitted, we are continuing to supply them. When normal conditions again prevail, Barber will be well equipped to render its customary service to the trade on burners and regulators.

scriptive folders sup- d free for your trade. ite for new Catalog Prices on Barber version and Appliance rners, and Regulators.

HE BARBER GAS BURNER CO., 3704 Superior Avenue, Cleveland, Ohio

BARBER GAS PRESSURE REGULATORS

rber Burners For Warm Air Furnaces, Steam and Hot Water Boilers and Gas Appliances

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Public Utilities Fortnightly

VOLUME XXXI *April 15, 1943* NUMBER 8

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

We were intrigued by an editorial pronouncement which recently appeared in an issue of our esteemed contemporary, *Electrical World*, concerning the relative attractiveness of employment in the electric utility business as compared with other industrial lines. This editorial ended with the following few sentences:

> "The glamour that once surrounded electric power has now been placed by youth on airplanes or electronics or some other new industry. They offer new and vast opportunities. Those alert and imaginative brains are needed in the utility business, but security of employment is too tame a lure when initiative is on the prowl."

We do not take issue with the general tenor of this editorial, which appeared to us both competently conceived and soundly developed. But is it strictly true that the "glamour" once surrounding electric power has gone? Maybe it has. But we don't like to think so. For once an industry loses its challenge for youth, it has itself reached the age of maturity. We have always liked to think of the electric power industry and every other utility industry as young and vital and continuously dynamic.

M. R. KYNASTON

A new era comes for an old holding company system.

(See Page 479)

E. F. DOWNS

Is the superhighway really a super-white elephant?

(See Page 465)

Past experience with the gas industry and the common carriers indicates the danger of quick decisions on the subject of whether or not an industry is "through," or a "has been." When the electric light bulb came into general use around the turn of the century, the gas industry, then largely dependent upon illuminating business, was written off by many experts as a static if not a decadent enterprise. But the gas industry went out and found other ways to use gas and now it is bigger and better than ever. The public calling of common carrier transportation has endured one change after another since the camel pack trails of biblical times.

Nobody is suggesting, of course, that the electric power industry has reached its peak of production or anywhere near it. We are still concerned only with that remark about "glamour." True, the small boy who used to stand at the depot and stare bug-eyed at a panting locomotive can now be found at the airport thrilling to the sight of a transport plane warming up. By the same token, the boy who used to fiddle with storage batteries and "mon-

key" with radios now has his attention challenged by the promising marvels of television and a myriad of electronic improvements.

BUT back of all these fantastic promises of the future is the old electric power line—yes, and to some extent the old telephone line. When television comes into popular use it will be powered by electricity and largely transmitted by telephonic art. No matter how many and how intricate electronic improvements may be, the story will be the same—central station service. It is truly the handmaiden of the future.

VIEWED in this light, the "glamour" has not departed from the electric utility business or from the other utilities. It remains for utility men to stake their claims in these new fields of endeavor. It remains for them to win recognition of the fact that electric art is fundamentally the be-all and end-all of the wildest dreams which the Sunday supplement writers can feature to capture the imagination of young America. The glamour is still there and it will remain there. What is needed is a little nail polish and manicuring, so to speak, to bring out its luster.

WHEN it comes to glamour the electric power industry is still the Mae West of all the industrial arts. But some may fail to recognize her if she continues to go in for Mother Hubbards and publicity-shy routines.

IN this issue we welcome the opportunity of introducing a newcomer to our pages, CHAIRMAN R. W. PETERSON of the Wisconsin Public Service Commission. His article on "Tax Discrimination against Private Utility Customers" begins on page 473. CHAIRMAN PETERSON was appointed to his present post on October 6, 1939. He began his career as a private attorney in the city of Berlin, Green Lake county, Wisconsin. He was district attorney of that county for eight years, and later represented it in the state legislature for six years, during four of which he was Republican floor leader.

THE opening article on trade barriers with respect to common carriers is the joint product of E. F. DOWNS, Chicago engineer and statistician, and S. J. KONENKAMP, Chicago attorney. MR. DOWNS, who has previously written for us, is a recognized expert on transportation economics who has pioneered in his development of comparisons in traffic capacity factors. The highway studies discussed in this article were initiated as a by-product of public transportation studies and investigations in Middle West cities.

MESSRS. DOWNS and KONENKAMP are orthodox in their beliefs, summing up tax spending in two concepts: outgo less than income equals horse sense; outgo greater than income equals nonsense. They feel quite strongly that when the beneficiaries are unwilling or unable to pay the costs of a development, then that development is without economic justification. Superhighways can be justified, they say, only when potential toll collections make feasible the issuance of revenue bonds to finance construction.

L. D. FARRAR

Is the OPA a DE FACTO *regulator of public utility rates?*

(SEE PAGE 486)

M. R. KYNASTON, whose article on recent developments in the United Gas Improvement situation appears on page 479, is by profession a dealer in securities with offices in Washington, D. C. As an avocation he is a writer on matters dealing with business economics and finance.

ANOTHER newcomer to our pages in this issue is LARSTON D. FARRAR, whose work may be familiar to some of our readers as the result of his numerous contributions to *Nation's Business*. MR. FARRAR is a native of Birmingham, Alabama. He is a graduate of Millsaps College (AB) of Jackson, Mississippi, and a former secretary of the Corinth (Mississippi) Association of Commerce and secretary-manager of the Johnson City (Tennessee) Chamber of Commerce. He is now residing in Washington, D. C., where he is associate editor of *Nation's Business*.

THE next number of this magazine will be out April 29th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129–192, from 47 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

PAUL V. MCNUTT
Chairman, War Manpower Commission.

"In time of war we can never say that anything cannot be done."

JAMES F. BYRNES
Director of Economic Stabilization.

"All wisdom is not centered in Washington. All direction cannot come from Washington."

EDITORIAL STATEMENT
Richmond News-Leader.

"To kill a business, first place a $1 ceiling on its product; then allow others to charge it $1.10 for raw material."

EDITORIAL STATEMENT
The Wall Street Journal.

"Government deficits out of control are the seed of disastrous inflation. No one disputes that and all must be aware of it."

SAMUEL O. DUNN
Editor, Railway Age.

"Those who believe in free private enterprise will have to fight for it incessantly and all along the line during and after the war."

PAUL G. HOFFMAN
President, Studebaker Corporation.

"If collectivism comes to America it will come by default on the part of the good citizens rather than design on the part of revolutionaries."

DWIGHT H. GREEN
Governor of Illinois.

"Bureaucracy and bossism, working hand in hand, have built for themselves during the last ten years a domain of wealth and power that has never been known in history, except, perhaps, in ancient Rome."

EUGENE E. COX
U. S. Representative from Georgia.

"There are too many who are trying to win the war with one hand and overthrow the system of free enterprise and democracy with the other. There is too much testing of theories and sociological experimentation."

JOHN W. BARRIGER
Vice president, Union Stock Yard & Transit Company.

"After the war, railroads will be confronted with 'superliners,' both aerial and marine, 'superhighways,' 'superpower,' and 'superpipelines.' The former carriers must be transformed into 'super-railroads,' too."

HENRY WALLACE
Vice President of the United States.

"The American public will not forget, and will not condone, any attempts to use the unavoidable shortages and restrictions of war time as a basis for a partisan campaign to undermine confidence in the government."

HAROLD E. STASSEN
Governor of Minnesota.

"It can well be said that if we walk over very many war time bridges with the devil at our side, we will find him at our side when we sit down to work out the peace . . . "

EDITORIAL STATEMENT
The New York Times.

"The more the administration's wage policy and new 48-hour order are studied the more ill-fitted they seem to solve either the problem of man power or the problem of inflation."

HARRY F. BYRD
U. S. Senator from Virginia.

"We cannot economize on a single dollar necessary to win the war, but under our present financial condition and the obligations that confront us we must use for many years to come our resources with prudence and wisdom."

EDITORIAL STATEMENT
Electrical World.

"Whether it has been money to provide an adequate supply of power, or losing trained engineers and operators, or giving up some pet method or some apparatus on order, or converting from oil, or expanding the coal pile, the utilities have asked but one question—will it help the war effort?"

FREDERICK C. CRAWFORD
President, National Association of Manufacturers.

"To criticize and yet be able to coöperate at the same time has been a peculiarly 'new world' blessing. . . . This spirit of fighting for what you believe and coöperating for what you want has characterized our elections; it has characterized our business competition."

EDWARD V. RICKENBACKER
Aviation executive.

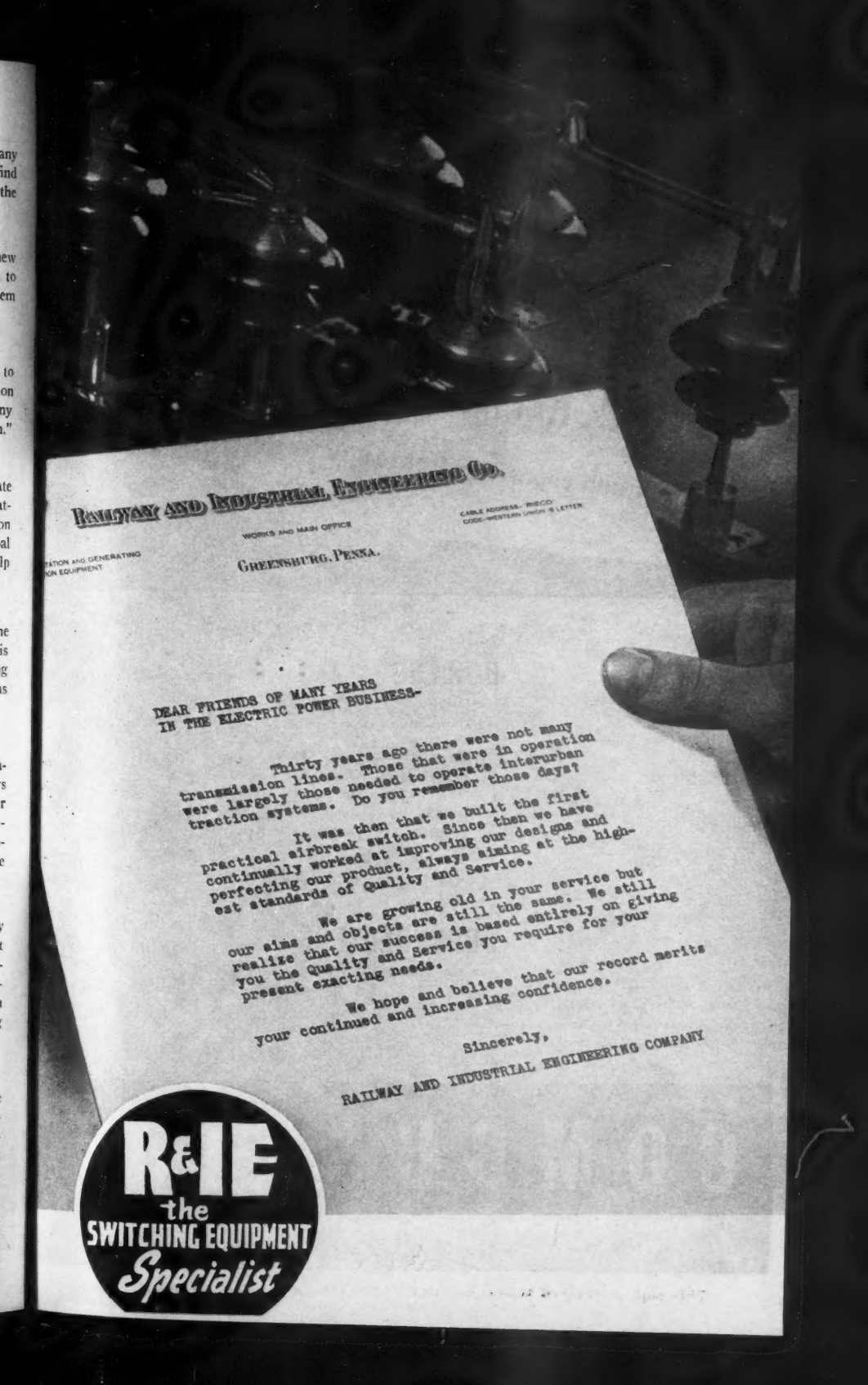
"We hear a lot nowadays about the shortage of man-power hours. It is not the shortage of man-power hours that is slowing up the badly needed production of our war weapons and supplies. No—but it is the shortage of productive man-power hours, for again none of us are producing so much that we cannot—all of us—produce a little more."

MARTIN T. BENNETT
Chief, gas production section, power division, War Production Board.

"The operating man is now faced with the probability of having to make [manufactured] gas out of just about anything he can get. Even though we recognize the extremely important position of public utilities in the overall war program, we must also recognize that not even the utility industry is doing its all until it does everything it can do to get along with what it has."

EDITORIAL STATEMENT
New England Letter, First National Bank of Boston.

"The problems before us in war time and after will be the greatest we have known. We have the tools, resources, man power, and management to cope with whatever may come. But this is not enough. Opportunities for a vigorous, forward advance may slip through our grasp if we destroy incentive and throttle private initiative, which have been the creative forces in the building of this nation."


RAILWAY AND INDUSTRIAL ENGINEERING CO.
WORKS AND MAIN OFFICE
GREENSBURG, PENNA.
CABLE ADDRESS - RIECO
CODE - WESTERN UNION 'B' LETTER
DEAR FRIENDS OF MANY YEARS
IN THE ELECTRIC POWER BUSINESS-
Thirty years ago there were not many transmission lines. Those that were in operation were largely those needed to operate interurban traction systems. Do you remember those days?
It was then that we built the first practical airbreak switch. Since then we have continually worked at improving our designs and perfecting our product, always aiming at the highest standards of Quality and Service.
We are growing old in your service but our aims and objects are still the same. We still realize that our success is based entirely on giving you the Quality and Service you require for your present exacting needs.
We hope and believe that our record merits your continued and increasing confidence.
Sincerely,
RAILWAY AND INDUSTRIAL ENGINEERING COMPANY
R&IE
the
SWITCHING EQUIPMENT
Specialist

STOKERS . . . Combustion Engineering has the most comprehensive line of stokers of any manufacturer.

UNDERFEED—multiple retort, single retort, (five types)
CHAIN GRATE—(four types)
TRAVELING GRATE—(three types)
SPREADER

(C-E Stokers include all types known by the trade names Coxe, Green, Type E, Low Ram and Skelly)

PULVERIZED FUEL EQUIPMENT . . . The application of pulverized fuel firing to power boilers was pioneered by Combustion Engineering. C-E developments which include the use of water cooled walls and water screens, C-E Raymond Mills and C-E Burners are largely responsible for the position of eminence which pulverized fuel firing holds today in the field of steam generation.

(Includes equipment known by the trade names Raymond and Lopulco)

FURNACES . . . C-E Furnaces feature both plain tube and extended surface water cooled wall construction; also both dry and slagging bottom designs.

RELATED EQUIPMENT . . . In addition to its extensive line of steam generating and fuel burning equipment Combustion Engineering offers:

AIR HEATERS—plate type, tubular type
ECONOMIZERS—Continuous loop design, flanged joint design—both fin tube type

(Economizers are known by the trade name Elesco)

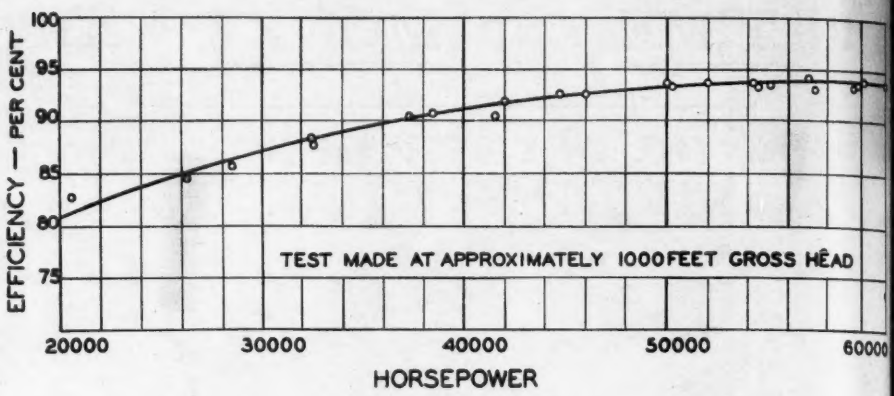
COMPLETE UNITS . . . Built in suitable combinations of boiler, fuel burning and related equipment for any fuel and for capacities ranging from 1000 to over 1,000,000 lb of steam per hr. Also complete units of standard design known by the trade names C-E Steam Generator, Type VU and Type VU-Z.

C-E

A-697

ENGINEERING

COMBUSTION ENGINEERING COMPANY, INC. 200 MADISON AVENUE, NEW YORK, N. Y. • CANADA: COMBUSTION ENGINEERING CORPORATION, LTD., MONTREAL



FIELD TEST CURVE

for

60,000 H.P.—925′ NET HEAD—450 R.P.M.

VERTICAL FRANCIS TURBINE

Built by

Newport News Shipbuilding and Dry Dock Company

(Hydraulic Turbine Division)

Newport News, Virginia

Our facilities for building turbines, valves, rack rakes, gates, etc., are now in use for constructing ships for the Navy.

On projects vital to the war effort the urgent need for speed in construction points to Ric-wiL Prefabricated Pipe Units for steam, hot water, oil, hot or refrigerated process lines. • Ric-wiL Pipe Units are complete when they reach the job —pipe, insulation, protective covering. Field men couple or weld the pipe, insulate the joints and move on to the next joint. Man-hours are saved in the field and the installation is completed at a rate that can give no comfort to the Axis.

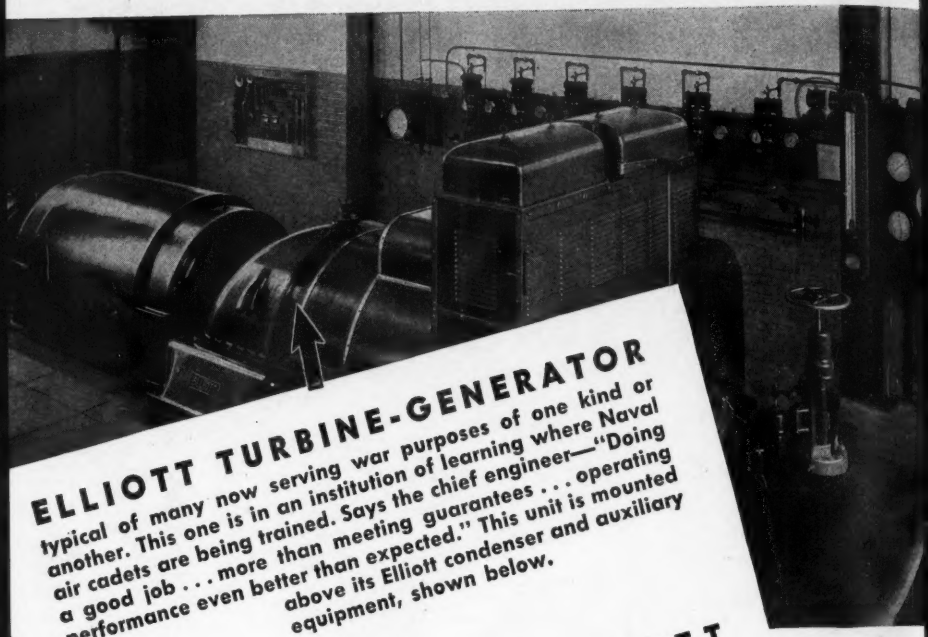
In addition, these units produce a permanent, low-maintenance system while using critical materials amounting to only 15% to 20% of their total weight . . . And they require for shipment only 20% to 25% of the space in available gondola cars that would be required for an equal footage of other types of conduit construction. • Speed is the essence of wartime construction—and Ric-wiL Prefabricated Pipe Units have proved a definite aid.

When Makeshifts Won't Do—**RIC-WIL**

Architects, Engineers and Contractors on war projects will find much helpful information in the Ric-wiL Engineering Data Book. Write . . . on your letterhead . . . for a copy.

RIC-WIL CONDUIT SYSTEMS FOR UNDERGROUND STEAM
THE RIC-WIL COMPANY • CLEVELAND, OHIO
AGENTS IN PRINCIPAL CITIES

All ELLIOTT—*from top to bottom*



ELLIOTT TURBINE-GENERATOR

typical of many now serving war purposes of one kind or another. This one is in an institution of learning where Naval air cadets are being trained. Says the chief engineer—"Doing a good job . . . more than meeting guarantees . . . operating performance even better than expected." This unit is mounted above its Elliott condenser and auxiliary equipment, shown below.

ELLIOTT EJECTOR UNIT

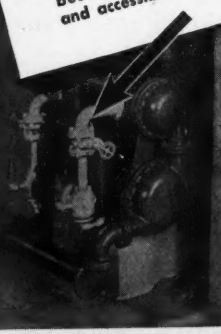
This twin two-stage steam jet ejector maintains the necessary vacuum on the condenser. Like all the related Elliott equipment in this installation, engineering and design are exactly coordinated for best overall operation and accessibility.

ELLIOTT MECHANICAL DRIVE TURBINE

which drives the condensate pump. Modestly trying to hide behind a pillar, but it's "all there" in reliability plus economical operation.

ELLIOTT CONDENSER

of surface type, serving the turbine of the generating unit above. Typically Elliott in its sound design, its sturdy structure, and its efficient, dependable performance.



Army-Navy "E" pennant awarded to both Jeannette and Ridgway plants of Elliott Company.

ELLIOTT COMPANY

Jeannette, Pa. • Ridgway, Pa. • Springfield

DISTRICT OFFICES IN PRINCIPAL CITIES

Utilities Almanack

Due to war-time travel restrictions, conventions listed are subject to cancellation.

APRIL

15	Th	¶ *American Water Works Association, Indiana Section, will convene, Indianapolis, Ind., Apr. 29, 30, 1943.*
16	F	¶ *Missouri Association of Public Utilities starts meeting, Excelsior Springs, Mo., 1943.*
17	Sa	¶ *American Gas Association Distribution Conference will be held, Cincinnati, Ohio, Apr. 29, 30, 1943.*
18	S	¶ *Indiana Telephone Association will hold meeting, Indianapolis, Ind., May 5, 1943.*
19	M	¶ *American Transit Association will hold regional conference on war-time transit problems, New York, N. Y., May 5–7, 1943.*
20	Tu	¶ *Illinois Telephone Association opens meeting, Chicago, Ill., 1943.* ¶ *National Electrical Manufacturers Asso. starts meeting, Chicago, Ill., 1943.*
21	W	¶ *American Water Works Association, Pacific Northwest Section, will convene, Bellingham, Wash., May 7, 8, 1943.*
22	Th	¶ *New England Bus Conference opens, Boston, Mass., 1943.* ¶ *U. S. Independent Teleph. Asso. starts spring conference, Chicago, Ill., 1943.*
23	F	¶ *Association of Washington Cities will hold session, Wenatchee, Wash., May 13, 14, 1943.*
24	Sa	¶ *National Fire Prevention Association will hold meeting, Chicago, Ill., May 10–13, 1943.*
25	S	¶ *Pennsylvania Independent Telephone Association will hold meeting, Pittsburgh, Pa., May 13, 14, 1943.*
26	M	¶ *North Central Electrical Industries opens all-industry conference, 1943.*
27	Tu	¶ *Ohio Independent Telephone Association starts meeting, Columbus, Ohio, 1943.*
28	W	¶ *Missouri Valley Elec. Asso. starts engineering conference, Kansas City, Mo., 1943.* ¶ *Natural Gas Management Conference opens, Cincinnati, Ohio, 1943.*

Courtesy of A.C.A. Gallery *From Elsie Hafner, N. Y.*

"Mining Town"

By

A. Tromka

Public Utilities
FORTNIGHTLY

VOL. XXXI; No. 8 APRIL 15, 1943

Those State Trade Barriers —Fact or Fiction?

PART I.—*Historical background and tests.*

Various kinds of so-called trade barriers—particularly motor vehicle laws—analyzed by the authors who state that the agitation for removal comes mostly from the transport truck industry representing less than one per cent of registered motor vehicles.

BY E. F. DOWNS AND S. J. KONENKAMP

"BARRIERS between the states must go," is proclaimed by newspapers, periodicals, and government bureaus. Maps of the nation are prepared showing Chinese walls separating the various states. Trade journals and unbiased publications alike deplore the nonuniformity in weight and length restrictions on motor vehicle licensing, and state chambers of commerce decry discriminatory legislation in favor of homegrown products.

Reaction against some cases of apparent discrimination has been so violent as to impair the legitimate police power inherent in motor vehicle licensing; hence, a reëxamination of the trade barrier question may be justified when war-time hysteria tends to level legitimate state regulations and cutthroat legislation at one and the same time.

Admittedly, the matter of real and imagined conflicts between states is confusing. Every state has its own

motor vehicle regulations. In addition, the entire code of state laws differs greatly from state to state. Governmental bureaus promulgated edicts with the full force of law even before the present emergency. The entire rail freight rate structure reflects the whims of fifty sessions of Congress and of the Interstate Commerce Commission, sometimes with little regard for the actual cost of rendering the service. In these problems, infinite work exists for reformers; work far more pressing than North Dakota's prohibition of using oleomargarine on popcorn or dry Kansas' checking on interstate liquor trucks.

ECONOMIC interests clash and only time provides the requisite experience for a satisfactory solution. A silent economic conflict has continued among the states since the Revolutionary War, and on numerous occasions the Supreme Court of the United States has found it necessary to adjudicate states' rights. More frequently, however, burdensome restrictions fall of their own weight. All states seek self-betterment, sometimes at the expense of their neighbors, but the Federal government regulates Interstate Commerce under a constitutional provision:

> To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

Hence, trade barriers died when the second and present government of the United States came into being. Nevertheless, exercise of police power is inherent in the states and is among the powers not delegated to Congress.

Inasmuch as the basic law seeks to maintain a free flow of commerce within the nation's borders, it has been the purpose of all Federal laws regulating interstate commerce to prevent the growth of trade barriers. One outstanding exception about which volumes have been written occurred when Oklahoma was admitted into the Union as a state. Because of the Indian reservations, Congress stipulated that under no conditions might alcoholic beverages be manufactured or sold within the new state. This exception later proved to be a potent argument in favor of the Wilson Act, which sometimes is cited as a trade barrier. It is, in fact, a special-purpose law to prevent the shipment of alcoholic beverages into dry states.

FROM the beginning of the present form of government, Congresses have proven very liberal in appropriations for stimulating the free flow of interstate commerce. The National turnpike, started in Maryland in 1808 toward the Mississippi river, was one of the early efforts with this aim. Succeeding Congresses have provided liberal aid to waterways, railways, highways, and airways, always assisting in facilitating trade among the states.

Physical, legal, or financial obstructions to free trade, whether across the boundaries of continents and nations or between states, are trade barriers. Trade barriers, set up by governments through tariffs or established by plain brigands, gave a motivating force to the conquests of Alexander, and to the travels of Marco Polo, of Columbus, and of Magellan. The major portion of the world's wars have resulted from these interferences with free trade or commerce among peoples, and the chief

object of the later Crusades was to facilitate trade.

Alexander sighed not only for more worlds to conquer; he also wanted more worlds to trade with. Napoleon, in his dreams of ruling over the continent of Europe, envisioned it free of trade barriers. "We need a European Court of Appeal," he wrote, "a single currency, the same weights and measures, the same laws. I must make all the nations of Europe into one and the same people."

The national spirit which blasted Napoleon led to later wars. The arbitrary national borders established at Versailles in 1919, with their accompanying trade barriers, are said by some to be the underlying cause of Naziism.

BUT, in contrast to the Nationalist spirit inherent in Europe, the polyglot population of the United States presents an entirely different picture. Nearly one-half of North America, extending from ocean to ocean, and including most of the world's races, has been welded into one people. Violent loyalty to one's state is unheard of. Even on the scaffold, Nathan Hale, a Connecticut Yankee, voiced his regret that he had but one life to give for his *country*.

In the great Mississippi valley alone, Nature has provided one and one-quarter million square miles of arable land without physical barriers, and the foundations laid in 1787 prohibit trade barriers in an area which supports 130,000,000 people. Never before in the world's history has such a condition been seen, where richness of the market may be gauged from one simple fact. A product retailing for a nickel is advertised on a nation-wide radio hook-up at a cost of perhaps a million dollars annually.

Freedom from conflicts between the states always has been an American aim. Trade barriers were very real in 1785 when the thirteen states had a free rein in establishing tariffs and in printing money. Rebellions became the order of the day. Merchants in Philadelphia and New York city refused to honor paper money issued across the river by the state of New Jersey, while Rhode Island farmers staged a sit-down strike against the "wicked merchants" of Providence who offered them paper money in payment for farm produce. The power of taxing exports also was the cause of numerous complaints.

REPRESENTATIVES of the thirteen states were invited to confer on means of ironing out the vulnerabilities of the first Constitution, and of providing "more perfect union." The first conference called at Annapolis in 1786

¶ "IN *the great Mississippi valley alone, Nature has provided one and one-quarter million square miles of arable land without physical barriers, and the foundations laid in 1787 prohibit trade barriers in an area which supports 130,000,000 people. Never before in the world's history has such a condition been seen, where richness of the market may be gauged from one simple fact.*"

by Washington's former aide-de-camp, Alexander Hamilton, was a dud. Another year's agitation by Washington, Franklin, Hamilton, and others served to stir up interest, and in May of 1787 delegates of nine states convened in Philadelphia. By July, representatives of twelve states were in attendance at the Constitutional Convention, and only Rhode Island was a hold-out until the end.

The deputies who attended the second or Constitutional Convention were mostly bright young men. But they possessed the vision to adopt one principle which removed the threat of trade barriers and border wars in the United States:

> No duty or tax shall be laid on articles exported from any state. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another, nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

While most powers were retained by the states, those delegated to the central government include the rights:

> To lay and collect taxes, imposts and excises, to pay the debts, and provide for the common defense and general welfare of the United States, but all duties, imposts, and excises shall be uniform throughout the United States.
>
> To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.
>
> To establish post offices and post roads.

IN support of free and unrestricted commerce between the states James Madison foresaw the self-destruction of unwieldy state restrictions and said:

> We are not providing for the present moment only, and time will equalize the situation of the states in this matter.

Changes in industry and in transportation always bring with them far-reaching economic repercussions. The Revolutionary patriots with enormous grants of land in inaccessible locations took the direct route to guarding their economic interests, promoting the formation of a new government with power to *establish post roads*. The advent of railroads sounded the death knell for earlier forms of transport and the automobile superseded the Interurban while cutting deeply into railroad revenues.

Today, the chief mourners on the subject of so-called trade barriers are the newcomers into the transportation field. The transport truckers' methods include nothing so drastic as overthrowing a government. They prefer to receive a subsidy subtly working towards the ultimate of nation-wide operation upon the payment of one nominal fee. The public's sympathy is solicited by means of generalized advertisements by trucking associations which reached a new high with the statement:

> —speed and flexibility of motor freight cuts the cost of everything you eat, wear, and buy; trucks could save you *still more* except for state line delays.

Is it not in order to ask how much additional speed will be required to justify more than one billion dollars' annual aid to truckers?

THE cases of so-called conflicts between the states which have broken into print during the current war program generally cite specific instances where some truck has been delayed at a state line because of an overload. Sympathetic publications dramatize the plight of the trucker, stating that interstate commerce is as free as a traffic jam, despite constitutional guaranties. Repeatedly, the licensing restriction of a low-load-limit state which renders out-of-state trucks over-

Trade Barriers in 1785

"FREEDOM from conflicts between the states always has been an American aim. Trade barriers were very real in 1785 when the thirteen states had a free rein in establishing tariffs and in printing money. Rebellions became the order of the day. Merchants in Philadelphia and New York city refused to honor paper money issued across the river by the state of New Jersey, while Rhode Island farmers staged a sit-down strike against the 'wicked merchants' of Providence who offered them paper money in payment for farm produce."

loaded is described as a trade barrier, and the fact that many such trucks have been loaded with war matériel has added fuel to the flames. Thus, the fact is obscured that destination and load limitations en route probably were known to the trucker at the point of origin. Furthermore, load limitations in most instances apply to both intrastate and interstate trucking.

Proponents of legislation to remove so-called trade barriers are found in three classes: those who hold economic interests in trucking enterprises, a few with no apparent axes to grind including chambers of commerce and state officials, and finally bureaucrats who prepare treatises as a means of staying on the payroll.

THAT the lobbying and advertising are bearing fruit is evidenced by the bills which reach Congress to set aside laws which *impose unreasonable burdens upon interstate motor traffic.* Even high government officials demand that states relinquish their rights to regulate the use of state highways, though such relinquishment opens the way for destruction of the states' hard roads. Nothing more clearly shows the source of "trade barrier" propaganda and the desired end. Yet, the encroachment of Congress into the realm of intrastate police power might well be more harmful than any possible interstate conflicts.

The tests sometimes applied to state regulations to determine whether or not a barrier to trade has been created include:

Does it discriminate against nonresidents?

Does it apply alike to intra- and interstate transactions?

Does it discourage commerce across state lines?

The government-financed Marketing Laws Survey, titled "Barriers to Trade between States," lists eight categories of trade barriers with the following number of pages devoted to each:

1. Motor Vehicle Laws 16
2. Selected Dairy Laws 7
3. Oleomargarine Laws 13
4. Selected Livestock and General Food Laws 6
5. General Nursery Stock Laws.. 5
6. Liquor Laws 6
7. State Use Taxes 7
8. General Preference Laws 4

IN Motor Vehicle Laws (1), the spot where the economic shoe pinches is fully evident from study of this work. Forty-six states grant some form of road-tax exemption to all nonresident motor vehicles except the heaviest transport truck and "for hire" vehicles. Since these exemptions are usually conditioned on other states' reciprocating by granting similar favors, the practice is ingeniously christened "reciprocity" by the automotive interests.

The private motorist, on the other hand, representing 80 per cent or more of all registered motor vehicles may drive in any one of the forty-eight states, becoming aware of a state line only through a change in the road surfacing or the existence of a signpost. He will be welcomed to any state for an extended visit, with no questions asked concerning his point of registration. Exempting pleasure vehicles, which may spend two weeks per year in a foreign state, from the payment of road-use fees is one proposition. This application of reciprocity is not to be compared to the exemption given by Indiana to an Illinois truck, for example, which may spend more than half its time in using Indiana roads as a place of business, and vice versa.

A TANGIBLE case may help to clarify the hodge-podge of state laws governing the operation of transport trucks. The question of whether or not commerce across state lines is discouraged by motor vehicle laws is answered in a most interesting fashion if one considers a freight shipment between Chicago and Memphis. Over the direct route, three different sets of motor vehicle regulations are encountered by the trucker on this trip: Illinois, Kentucky, and Tennessee. Fees in one form or another may be necessary in each of the three states, and different weight limitations also are encountered with a limit of 40,000 pounds in Illinois. Before the war, Kentucky placed a limit of 18,000 pounds and Tennessee placed a limit of 30,000 pounds but allowed issuance of overweight permits.

At first glance, this appears to be a deterrent to interstate trade. However, the merchandise may be shipped by water if speed is not important, and a variety of connections by rail also is possible. No interference is given interstate commerce if either water or rail be chosen as the medium of transport; hence, it follows that the existing truck restrictions do not militate against *commerce* across state lines, but only against one of several means of transporting the goods in commerce.

AMONG other categories listed as trade barriers, Dairy Laws (2) invariably falls within the realm of exercise of police power.

Oleomargarine Laws (3) may be

discriminatory, yet oleomargarine never has qualified as a butter substitute on the basis of food value.

Police power only is exercised in Livestock and Food Laws (4) as well as in Nursery Stock (5). Is not the individual state better qualified to enforce restrictions on carriers of the Japanese beetle or corn borer than any centralized authority, and at a lesser cost?

Liquor Laws (6) show evidences of cutthroat intentions, yet, conditions may be described as reciprocal retaliation: Discrimination usually is dependent on another state's taking the initiative.

State Use Taxes (7) bear strong similarity to duties, being the nearest approach to a trade barrier so far examined. These taxes generally have been imposed by states having sales taxes, to overcome the advantages possessed by neighboring states not collecting such taxes. But, if a use tax prevents a resident from circumventing a sales tax, by purchasing in another state, is the matter of such national import as to require congressional action?

General Preference Laws (8) provide for the use of home-manufactured products by governmental and quasi governmental bodies. At their worst, these are annoying, smacking of feudal self-sufficiency, but they hardly seem to merit the attention of Congress.

It is seen that these eight categories into which all so-called trade barriers are grouped present only two real cases of trade barriers, items (7) and (8), involving small dollar value, while the remaining cases constitute the exercise of police power.

Although the Department of Agriculture has laid great stress on the existence of friction at thirteen state boundaries, this shrinks into insignificance when one considers the thousands of miles of boundaries along the ninety-odd state borders in the continental United States. The agitation for a let-down of licensing restrictions is sponsored by interests which represent less than one per cent of registered motor vehicles—transport trucks.

A brief discussion of the costs incurred by the various media of transport is given here, with the aim of bringing more clearly into focus the place where transport trucking fits into our national economy.

It is known that operating costs of water transport are the lowest. It is also known that railroads operate at a cost less than one cent per revenue ton-mile, but who knows the cost per ton-mile of truck operation? Some esti-

¶ *"... the chief mourners on the subject of so-called trade barriers are the newcomers into the transportation field. The transport truckers' methods include nothing so drastic as overthrowing a government. They prefer to receive a subsidy subtly working towards the ultimate of nation-wide operation upon the payment of one nominal fee. The public's sympathy is solicited by means of generalized advertisements by trucking associations ..."*

mates place the operating costs of trucks as high as 3 cents per ton-mile, or three times railroads' cost.

The revenue per ton-mile of for hire trucks has been calculated at over 4 cents. If truckers can't make money at that rate—four times the railroads' revenue—their economic needlessness should be obvious. It is generally believed that the mortality of personnel in trucking is as high as the mortality of equipment. Oil, labor, tires, repair, and depreciation costs, and other items of operation are uncertain, or unknown.

Thus the myth of the motor trucks as a low-cost transportation medium is destroyed.

(Concluded in next issue.)

More Postwar Planning

"WE must set as our goal [after the war] continued and sustained full employment with final responsibility for this condition resting upon a democratically elected government. This doesn't mean government ownership of large segments of industry, not rigid controls and regulations, nor equality of income, nor the domination of the state over the individual. Rather, we must resolve that these objectives be attained with a minimum interference by government—a government elected by and representative of the people—but that the degree of direction and control and participation by the government be such as to insure continued high levels of economic activity. The controls by government should be as broad and general as possible and should result in the least possible interference with the liberties of the individuals as consumers and individuals as workers and individuals as entrepreneur consistent with the objective of full employment.

"Many people sincerely believe that such objectives are internally inconsistent; that there cannot be responsibility for full economic activity in the hands of government without destroying private initiative and the system of free enterprise. I am convinced this is absolutely fallacious. I can conceive of broad governmental policies which not only do not interfere with and discourage free enterprise, but, on the other hand, give every possible play to a free enterprise, competitive economy."

—ROBERT R. NATHAN,
Chairman, planning committee, War Production Board.

Tax Discrimination against Private Utility Customers

Its indirect effect is to foster public ownership of utilities, in the opinion of the author, who, however, does not argue, pro or con, the public ownership question *per se*.

By R. W. PETERSON
CHAIRMAN, WISCONSIN PUBLIC SERVICE COMMISSION

THE past several issues of PUBLIC UTILITIES FORTNIGHTLY have carried articles on the inequities experienced by the present discriminatory tax program (both Federal and state) that taxes the privately owned utilities and exempts the publicly owned. One need not take sides on the controversial public or private ownership question to reach the conclusion that this tax policy should be modified drastically. The taxes are not paid by the utility. They are ultimately borne by the consumer as reflected in his rates, and whether one should be so geographically situated that he receives his utility service from a privately owned utility instead of a publicly owned one is no reasonable criterion as to whether be should be taxed for that service. In crucial times like these, when Congress is searching for new fields of tax revenue, I commend for its serious consideration the principal of taxing all utilities on the same basis. Further comment will be made on this subject later in this article.

In discussing the subject of utility taxation, I will herein allude to Wisconsin. I use Wisconsin as the example solely for the reason that I am familiar with the data used, and not because it is other or different from the remaining states.

Tax savings under public ownership of utilities have always prevailed, and there is nothing new or novel in the situation today, except that, because of the magnitude of the tax differential, questions concerning the fairness of the difference in taxes between those of publicly owned and privately owned utilities become more apparent. Conjecture arises as to whether under the present laws the future trend will be toward more munic-

ipal operation or whether the tax laws shall be changed to remove this incentive by erasing this economic advantage and the corresponding abnormal tax disparity.

MUNICIPAL utilities in Wisconsin are subject only to local and school property taxes. On the other hand, private electric utilities pay the Wisconsin ad valorem tax based on the value of property; Wisconsin income taxes; Wisconsin unemployment compensation taxes; Federal excise tax on electricity; Federal capital stock tax; Federal social security taxes; and Federal income and excess profits taxes. In dollar volume the difference is substantial. The taxes of Wisconsin municipal electric utilities in 1941 were $294,000, or about 5.4 per cent of gross revenue, while those of the private electric utilities were $14,205,000, or about 21.8 per cent. Thus, if municipal utilities in Wisconsin had paid the same taxes proportionately as private utilities paid in 1941, they would have paid $1,180,000, or $886,000 more than they actually did pay. The spread has greatly increased since 1941.

In 1942, based on incomplete data now available, taxes of private electric utilities in Wisconsin will average about 27 per cent of gross revenue, with some utilities having taxes over 30 per cent. Those of municipal utilities, however, will remain about the same per cent as in 1941, since there has been no change in tax laws affecting their operations. Thus, currently, municipal utilities pay taxes of about 6 per cent of their gross revenues as compared with 27 per cent for privately owned utilities. This is a tax differential in Wisconsin of 21 per cent, and on a nation-wide basis the spread would probably approximate this ratio.

To find the exact amount of increased tax revenue nation-wide that a parity tax on public utilities would provide would require a study of the tax laws of each individual state and combined statistics on all publicly owned and privately owned utilities. I have not made such a study, but it is apparent, from an analysis of the Wisconsin situation, that the increase would be enormous. It is quite possible that this increased tax revenue would amount to several tens of millions of dollars; and, even in these days of thinking in billions, this amount should not be overlooked by taxing authorities.

It may be advanced that the tax saving is passed on to customers through reduced rates for service by the publicly owned utility. However, even if all the saving were so applied and the rates of the publicly owned utility were 21 per cent less, this would mean only that the savings in electric bills to the customers of the publicly owned utility were balanced by increases in the tax bills of the public generally.

AN illustration of the substantive effect of the tax differential is offered by a comparison of the operations of a specific private utility with what the situation could be under municipal operation. I have in mind a conservatively financed, well-managed public service corporation operating both electric and gas utilities. In 1942, it had a net operating income of $607,000. If the utility had been municipally operated during the year, with all

conditions identical except taxes, net operating income would have been $1,082,000. Consequently, if the same rates for utility service were maintained, merely by a change in ownership from private to municipal, the net income from the properties would be increased $475,000, or nearly 80 per cent. If the tax saving were passed on to customers, a reduction in rates of 16 per cent would result. This situation is by no means extreme, for the privately owned utility used in the comparison had taxes lower than the average of the private utilities, and under municipal ownership it would have *higher* taxes than the average of publicly owned utilities.

Such large tax savings are particularly significant in the not uncommon situation where a city is confronted with increasing costs of local government while the growth of the community is chiefly suburban. In these instances the growth may not create any increase in property valuation for the city proper, while the natural demands of the increased population of the community, as a whole, may give rise to added costs of municipal services.

THERE is a natural desire to keep local tax rates from rising. But, in situations where increases in assessed valuation do not keep step with increased costs of local government, where will the necessary additional local revenue be obtained? The answer may be in the acquisition of the local utility and obtaining the benefits for the local community of the tax exemption subsidy afforded publicly owned utilities. This will be a local benefit only, and to the detriment of state and Federal tax revenues, as hereinafter pointed out.

Let us assume an instance where a private electric utility was earning 6 per cent after provision for all taxes. If a municipality bought it, the requirements for payment of principal and interest on a 25-year, 3½ per cent bond would be 6.07 per cent, or about the same as the rate of return being earned by the local utility. However, assuming the same rates for service, if the utility is owned by the municipality, the tax savings may easily bring the return up to 10 per cent. Such a return will permit the repayment of the bonds issued to finance the purchase of the property and leave something over to pay into the general funds of the city.

THUS, because of public ownership of the utility, the city may improve its revenues. In the first place, it obtains from the municipally owned utility local taxes equivalent to what

¶ "MUNICIPAL *utilities in Wisconsin are subject only to local and school property taxes. On the other hand, private electric utilities pay the Wisconsin ad valorem tax based on the value of property; Wisconsin income taxes; Wisconsin unemployment compensation taxes; Federal excise tax on electricity; Federal capital stock tax; Federal social security taxes; and Federal income and excess profits taxes. In dollar volume the difference is substantial.*"

the city would have received under private ownership. Secondly, it obtains return earned on the properties, plus tax saving, and these items afford a margin to pay interest on, and principal of, the purchase price, to reduce rates, and to pay moneys into the general funds of the city. The amount which could be devoted to each purpose would, of course, depend on the purchase price of the utility property and on the terms of the financing arranged. It seems clear, however, that with today's low-cost money and a purchase price bearing a reasonable relation to a fairly allowable rate base, the return, plus the tax savings, would not only finance the purchase price but permit additional revenue to accrue to the general funds of the city, even if a part of the tax savings is passed on to customers.

The conditions just outlined probably prevail in many communities. Where they do, the situation offers an incentive toward public ownership, not on the basis of the desirability of public ownership, *per se,* but solely because of the need for additional local tax revenue and the possibility of augmenting it by the substantial savings in other taxes which are possible under public ownership.

THE question may well be raised whether municipal utilities should be absolved from the major part of the tax burden. Is it fair for a customer of a private utility to pay, indirectly, 25 cents to 30 cents of taxes for each dollar of utility service he uses while the customer of a municipal utility pays only about 6 cents of taxes for each dollar of service? The difference in taxes must be made up by someone, as the cost of governmental activities must be met. Every dollar of taxes from which government-owned utilities are exempt adds to the tax bill which private enterprise and individuals must pay, and, in the final analysis, it is the individual who pays the tax bill, directly or indirectly, as the public is becoming more aware as the burden of war taxes becomes heavier.

Of course, if electric utility service were rendered solely by a governmental agency or agencies, there would be no unreasonable discrimination whether the utility system was taxed or not, although it is probable that the system would also be required to be a tax-collecting agency. In such an event there would be uniformity of treatment to all users of electricity and hence to the great majority of all citizens. But it seems to me there is an element of unfairness and of discrimination where, as at present, government-owned utilities are absolved from most of the tax burden.

I AM convinced that the entire tax situation as it affects publicly owned utilities is out of line. By statute they are specifically exempt from taxes which logic and fairness indicate they should pay. The private utility pays a Federal excise tax of 3⅓ per cent of the gross revenue derived from energy sold for domestic or commercial consumption. The publicly owned utilities do not pay this tax because the Internal Revenue Code specifically exempts them. Although the tax is by statute assessed against the vendor of the energy sold, it enters into the cost of private electric utility service and is paid indirectly by the consumer.

Thus, if a citizen flicks on the light

Electric Utility Service by Governmental Agencies

"... if electric utility service were rendered solely by a governmental agency or agencies, there would be no unreasonable discrimination whether the utility system was taxed or not, although it is probable that the system would also be required to be a tax-collecting agency. In such an event there would be uniformity of treatment to all users of electricity and hence to the great majority of all citizens."

switch in a community served by a private utility, he pays the tax, but if he is served by a publicly owned plant, the same act creates no tax expense. To me, this condition evidences an outright subsidy to publicly owned utilities with no reason therefor other than an apparent attempt by tax legislation to further public ownership of utilities.

ANOTHER example of tax exemption subsidy in the tax statutes is the exemption from Federal income taxes of the interest on obligations of publicly owned utilities. This results in further loss of tax revenue to the Federal government and in additional subsidy to the publicly owned utility, because since it can finance with tax-free bonds it is in a more favored position than the privately owned utility in the capital markets. Further, it is discriminatory as between those who invest their capital in private utilities and those who invest in publicly owned utilities.

Interest on bonds is income to him who receives it and should be subject to the same taxes whether paid by a private utility or by one publicly owned, particularly where the public agency operating the utility does so in its proprietary capacity. Wages and salaries paid by public agencies, including publicly owned utilities, are now subject to Federal income taxes. There seems no reason why *capital* invested in a publicly owned utility should be tax free while *labor* pays full income taxes on what it gets.

IT may be argued that to tax government-owned utilities would take away the advantages of public ownership and deter its growth. But it seems

to me that grounds for public ownership are based on shifting sands if they are predicated solely upon tax savings which government-owned utilities are permitted to enjoy by the grace of Congress and of the state legislatures. If such were the only reason for public ownership, then no justification for it would exist. I realize that many and more cogent claims for public ownership can be made, but these lead into realms of social and political economics which need not be discussed here. The point is that savings in taxes are *not* a *reason* for public ownership; yet, perhaps more than any other single factor, they may lead to increased activities in this field.

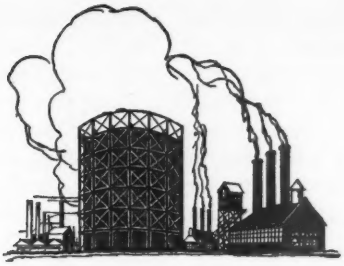
Even if the tax differential were removed by making publicly owned utilities subject to the same taxes as those privately owned, there would still remain possibilities of reductions in the cost of money sufficient to furnish the "savings" incentive for public ownership.

IN Wisconsin, and no doubt in many other states, municipally owned utilities may issue bonds to the extent of the entire cost of property. Thus, their entire capital can be obtained at an interest cost of from 3 to 4 per cent. Private utilities quite properly are restricted in the amount of senior obligations which they issue, so that bonds may furnish, say, from 50 to 60 per cent of the capital on which interest is 3 or 4 per cent. The remaining 40 or 50 per cent of capital is obtained from obligations junior to bonds, and from stock on which the cost may average 6 per cent or more. Hence, the resulting saving to the municipal utility may equal 1½ to 2 per cent, or even more, on the total capital requirement.

This saving in cost of money under government ownership should afford sufficient impetus toward public ownership, in so far as it may be motivated by an attempt to reduce costs, without the additional incentive afforded by a forgiveness of taxes. I do not quarrel with this advantage. After all, with bonds of a municipal utility, the taxing power of the city, directly or indirectly, is back of the bonds, and this additional security does and should command lower interest rates.

THE topic herein discussed refers to "indirect effect of present taxation on public ownership of utilities." It should be understood that I have not attempted to argue for or against public ownership. I maintain that if public ownership is to be accomplished, it should be brought about directly by a vote of the people affected, rather than indirectly by a taxation program.

Advocates of any theory must be realistic and practical. They may foster their cause in the inception by gaining legislative advantages for it, but in the end the spirit of fairness and fair play of the American people will insist on all participants starting from the post at the same time and letting the race go to the swiftest. Legislators might well reappraise our present tax structure as applied to utilities and may conclude to tap this new source of revenue; namely, the publicly owned utilities. If they do not, the present abnormal tax differential tends toward promotion of public ownership.



The Granddaddy of All Utility Holding Companies

The UGI—United Gas Improvement Company—was the first major public utility holding company to begin operations in the United States. Recently it obtained from the SEC approval of a voluntary plan for divestment of certain securities and assets under the terms of the Holding Company Act.

By M. R. KYNASTON

On December 22nd last the United Gas Improvement Company — commonly referred to as the UGI—notified its stockholders that it was on that date filing with the SEC for approval a plan for the divestment of certain securities and assets under § 11(e) of the Public Utility Holding Company Act. This plan was approved by the commission on March 18th.

This action is perhaps of more than usual interest because the UGI was the original public utility holding company. The reasons for its organization and growth show the important rôle played by such organizations in developing utility service and reducing its cost to the public, facts often overlooked during the holding company controversy which led to the enactment of the Holding Company Act.

The UGI is over sixty years old, as it was organized June 1, 1882. Its initial purpose was the introduction of the Lowe water gas process, a new method for the manufacture of artificial gas. Up to that time gas had been manufactured by carbonization of coal, and water gas—as the Lowe process was commonly called—was a distinct advance in the art.

The company manufactured and promoted the sale and installation of Lowe water gas production machinery, which in time became known all over the world as "UGI Water Gas Sets." Since its inception, UGI and its affiliated companies have sold over 1,200 water gas sets, with a daily capacity of one and three-quarter billion cubic feet of gas and with a value of approximately $23,000,000. There is hardly a gas plant in the United States

that does not use a gas-manufacturing set based upon the Lowe patents.

In the early years the company faced the usual difficulties of introducing a new process to a skeptical industry, and because of this, UGI leased, and later bought, control of gas companies throughout the country in order to install the Lowe process.

In 1882, the gas industry's most formidable competitor appeared. Three months after the organization of UGI the first electric generating station was put into operation in New York. Within the next decade electricity seriously threatened the existence of the gas industry by displacing gas for lighting.

THE UGI, however, probably saved the life of the gas industry by giving it the means of postponing for several years the inevitable loss of the lighting business while it was developing its cooking and heating business. Carl von Welsbach, an Austrian, had invented a mantle which glowed brightly when heated in the proper gas flame. Sensing that salvation, for the time being, lay in replacing the old open-flame burner with the Welsbach light, UGI in 1887, through a subsidiary—The Welsbach Incandescent Gas Light Company—acquired the United States patent rights. Shortly thereafter a factory was established in Gloucester City, New Jersey, where some 648,000,000 Welsbach mantles were manufactured and shipped all over the world before the eventual displacement of gas, as an illuminant, by electricity.

But the UGI, although at first exclusively interested in gas, recognized the coming importance of the infant electric industry. Through the purchase of the Heisler Electric Company, and the development of the electric apparatus and appliances introduced by that company, the UGI made contributions to the new industry that greatly helped to carry it through its initial stages of experimentation and development. The UGI was compelled to carry on this pioneer work on its own ingenuity and resources. Development losses and expenses were absorbed because the company had faith in the ultimate growth of the industry. It further backed its faith in the future of electricity by adding electric light and power properties to its gas company holdings. Several companies were acquired from time to time and either retained or subsequently sold or exchanged for other electric properties; additional gas companies likewise were acquired and some of those retained are now large and important separate operating companies in the UGI system or part of other expanded systems. Thus, UGI gradually changed from a company primarily instrumental in the development of the technical arts of the gas and electric industries, to the ownership and operation of properties of this type.

THE small isolated electric and gas companies that were bought in the early days were in most cases the genesis of the UGI's present investment in utility operating companies and in other holding companies.

UGI has for years pursued a policy of development and integration in order to obtain for consumers the benefits of large-scale, unified, coördinated operations and efficient management. In some cases this has involved

the acquisition of other holding companies (which could not have been acquired by the operating companies involved) owning additional properties scattered through various states. These properties, where possible, have subsequently been regrouped, those not available for integration disposed of, and the holding company dissolved.

As it is today, the company has assets in excess of $332,000,000 (at cost or less), of which investments primarily of a permanent nature and costing some $290,000,000 consist of—

Investments in majority-owned and other statutory subsidiaries — $236,093,427—81% of total investments.

Other investments—$54,271,171—19% of total investments.

The major investments in subsidiary companies are in the Pennsylvania-Delaware-Maryland group and amount to $153,000,000 out of total investments in majority-owned and other statutory subsidiaries of $236,000,000, which latter figure includes investment of some $59,000,000 in Public Service Corporation of New Jersey. They consist of gas and electric companies serving an area in southeastern Pennsylvania, including Philadelphia; adjacent Delaware, including Wilmington; gas service in additional territories in southeastern Pennsylvania; and electric service in northern Maryland and southern Pennsylvania in the vicinity of the Conowingo hydro development on the Susquehanna river. All of these companies, covering an area of over 3,000 square miles, are interconnected with respect to electricity and to a great extent interconnected for gas service.

THROUGHOUT its sixty years of existence, Philadelphia, the nucleus of this territory, has been the home of UGI. Since 1889, UGI has consistently increased its investment in its home territory; enlarged the area served; added, merged, and consolidated companies until today there stands as the predominant interest its investment of $132,000,000 in Philadelphia Electric Company, the largest company in this integrated group.

The latter is an outstanding example of the way small isolated companies have been replaced by one large company, the present Philadelphia Electric Company, not including its subsidiaries, being the outgrowth of some 400 separate companies. Philadelphia Electric properties supply electric service in the city of Philadelphia and in adjacent southeastern Pennsylvania, including Delaware county and substantial parts of Bucks, Chester, and Montgomery counties, and the northeastern part of Maryland. In the latter territory is the large Conowingo hydro-

¶ "GAS *was introduced to the city of Philadelphia in 1836. At that time the gas works were privately owned and management was by city-appointed trustees. Early in 1841, after five years of successful pioneering, city councils passed an ordinance which resulted in municipal ownership. From this time on until the management and operation was taken over by the UGI in 1897, gas service in Philadelphia underwent many vicissitudes.*"

electric station on the Susquehanna river. Service is supplied to an estimated population of over 2,800,000.

Gas service of the Philadelphia Electric Company is rendered in substantial portions of Delaware, Chester, Montgomery, and Bucks counties, and in a small part of Lancaster county to a total population estimated at 750,000.

What were once several hundred individual companies, mostly under different ownership, have been brought into one large company serving some 2,000 square miles of territory at rates from 40 per cent to 60 per cent lower than previously. This one company serves electricity to about 90 per cent of the farms in its territory. The UGI also developed other important investments in the same and adjacent areas.

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In 1897, the city leased the gas works to UGI for a period of thirty years, under which lease benefits accrued to the city to the extent of more than $115,000,000:

Rent paid to the city of Philadelphia in cash	$62,000,000
Betterments turned over to the city	33,800,000
Free gas for street lamps and city buildings	13,600,000
Cost of lighting, cleaning, and maintenance of city street lamps	6,400,000

During this period the aggregate net income to the UGI from this source was approximately $21,000,000.

That the first thirty years' operation of the Municipal Gas Works by UGI was satisfactory is evidenced by the fact that a new agreement was entered into between the city and UGI, effective January 1, 1928, for an indefinite period terminable by either party at the end of any 10-year interval. Under this agreement, the operation of the gas works was assigned by UGI to The Philadelphia Gas Works Company, a wholly owned subsidiary. The agreement was, in effect, a "service at cost" agreement, UGI receiving a fixed annual fee with the rates adjusted yearly to cover the cost of operations.

OPERATION under this agreement continued for a period of over eleven and a half years and netted the city of Philadelphia $48,660,000 in rentals and $11,111,716 in expenditures for plant improvements, making a total of $59,771,716 of benefits to the city. The gas consumers in the city were given eight rate reductions during the period of operation under this agreement which resulted in estimated yearly savings to them of $2,958,525. The aggregate income to UGI without deducting ordinary expenses brought about by the agreement was $9,918,832.

A third agreement, dated October 5, 1938, as amended by two agreements dated July 31, 1939, provided for operation of the Municipal Gas Works by The Philadelphia Gas Works Company, effective August 1, 1939, the faithful performance of the agreement by The Philadelphia Gas Works Company being guaranteed by UGI. This

Research Activities of UGI

"For the past several years the research activities of UGI have been directed towards a better utilization of the chemical possibilities of water gas tars and their light oil constituents. This has resulted in the development of new and highly specialized petroleum-cracking processes for the production of numerous strategically important hydrocarbon intermediates from crude oil in addition to the usual fuel products."

agreement also is a "service at cost" agreement, with a fixed rental to the city and a fee to the company.

In connection with the issuance of $41,000,000 principal amount of trust certificates by Fidelity-Philadelphia Trust Company, trustee of the Philadelphia Gas Revenue Trust, the city of Philadelphia has assigned the rentals payable under the agreement until such time as the payments received by the trustee shall aggregate an amount sufficient to pay the principal amount of the trust certificates, premiums, and interest thereon, together with the taxes and expenses of the trust.

One of the important results of the UGI influence over its subsidiaries has been their consistent reduction of rates. In the annual report to the stockholders for the year 1930 the company's policy was stated as follows:

> Rates should be constantly adjusted so as to yield only a fair and reasonable return on the value of the property devoted to the public use. This return should be sufficient at all times to attract new capital and to include a reward for efficient, enlightened, and honest management. Economies resulting from efficient management and from mergers, consolidations, and interconnections should be shared with the consumer in reduction of rates.

Important research work has been another of the company's valuable contributions to the public welfare. UGI laboratories are known the world over and are recognized as outstanding in their fields. For over sixty years the technical problems of the gas industry have passed through the company's laboratories and have been solved for the benefit of individual companies, the industry as a whole, and the public in general.

Starting with the development of equipment for the manufacture of water gas, and continuing with the refinement of this as well as the coal gas

process, almost every advance in the art has been the result of intensive research fostered by UGI.

Of the more outstanding developments in recent years are the UGI process for using heavy oils in the manufacture of carburetted water gas, its process for the reforming of high BTU hydrocarbon gases into gases suitable for mixture with ordinary blue gas, and its process for producing in carburetted water gas sets a substitute for natural gas with a BTU content approximating the latter.

The companies which UGI controls have had the use of these processes and discoveries which has resulted in considerable annual savings, besides which the processes and discoveries have been available to the industry in general upon the payment of reasonable royalties.

A MAJOR contribution to the country, as a direct result of UGI research, occurred at the time of our entrance into World War I when UGI gas plants were the only ones in this country prepared to produce toluene, an essential in the production of explosives. The company's experts were loaned to the government for the purpose of developing a program to meet the country's requirements of this necessary ingredient in the manufacture of trinitrotoluene—the so-called "TNT." These experts were largely instrumental in the development of the process used to produce toluene from kerosene, in this manner providing the Ordnance Department with an unlimited supply. The company's engineers designed and built several large plants for the manufacture of this product, the output of which made possible the volume production of high explosives required by the American and Allied forces.

For the past several years the research activities of UGI have been directed towards a better utilization of the chemical possibilities of water gas tars and their light oil constituents. This has resulted in the development of new and highly specialized petroleum-cracking processes for the production of numerous strategically important hydrocarbon intermediates from crude oil in addition to the usual fuel products. Ugite Sales Corporation, a wholly owned subsidiary, has for some time been testing the possibilities of these processes in an experimental plant which it constructed at Chester, Pennsylvania.

While the purpose of these operations has been to develop and to establish markets for products to be used principally in the manufacture of consumer goods, the entry of this country into the war has greatly disturbed the market for consumer goods and in turn has created a demand for other commodities essential to the successful prosecution of the war. As a result of these changed conditions, UGI research department and the Ugite organization are now devoting all of their energies, in coöperation with governmental agencies, to the determination of the extent to which the Ugite process may be utilized in the national emergency.

Thus the first public utility holding company has justified its long life by its fine record of beneficial public service.

IT was on December 22nd that the directors of the United Gas Im-

provement Company approved a plan for the distribution to the preferred and common stockholders of certain of the company's major investments and approximately $30,600,000 cash. Distribution of other assets would follow.

Immediately following the directors' action, the company sought and secured from the SEC approval of a voluntary plan for compliance with 11(e) of the Public Utility Holding Company Act. Roughly speaking, this plan proposes to retire UGI $5 dividend preferred stock by issuing for each share three shares of a new $1 dividend cumulative preference common stock of the Philadelphia Electric Company, plus $40 cash. As an alternative UGI preferred stockholders may also receive cash and new Philadelphia Electric stock.

The common stock of UGI is to receive, as partial distribution of capital, one-third of a share of new common stock of Philadelphia Electric and one-twelfth of a share of common stock of Public Service of New Jersey. Later, the common stock will receive its pro rata share of such remaining assets of UGI which it may be desirable and feasible to distribute.

W. W. Bodine, president of the company, asserted in a letter to the stockholders:

> The plan is deemed advantageous to the preferred stockholders of UGI, in that they will receive in liquidation partly cash and partly a stock of an operating company, Philadelphia Electric Company, bearing cumulative dividends which are preferred over those on the new common stock of that company. On the basis of the estimated earnings of Philadelphia Electric Company for 1942, the preferential dividend of the new $1 dividend preference common stock would be earned approximately 5.7 times, and the over-all coverage of interest, preferred and preference common stock dividends about 2.3 times.
>
> The plan is considered advantageous to the UGI common stockholders, since it will presently transfer to them the direct ownership of the company's major investments and facilitates further distribution or other disposal of those remaining assets as may prove desirable and practicable in the future, and effects a substantial reduction in taxes, besides making possible a reduction in other expenses of UGI.

While the plan provides for the present distribution of at least two-thirds of UGI assets, the ultimate disposition of other assets and of obligations such as security and performance guaranties and rearrangement of certain of the remaining properties offer substantially greater problems, however, than the initial step proposed to be taken.

Call for Capital

> "In considering the structure of the economy which must follow after the war, it is absurd to talk about our national economy becoming less capitalistic, if by that it is meant more abundant supplies can be obtained with relatively smaller capital resources.
>
> "When one considers the immense amount of capital which will be required to meet our postwar demands to reckon with the satisfaction of human needs, it becomes apparent that all thinking which does not take these factors into account is entirely without meaning. Our postwar economy will require, as its basic prerequisite, enormous amounts of the savings of the people to capitalize future economic progress. I have never looked upon government spending, whether for war or for peacetime needs, in any sense other than as 'economic blood-letting.' With this in mind, I believe it essential that private capital resources be carefully strengthened for use as economic 'blood transfusions' when the war has been won."
>
> —Emil Schram,
> *President, New York Stock Exchange.*

OPA's Utility Rate Control

Will this Federal war agency, through its right to intervene in rate cases to prevent inflation, dominate the established Federal and state regulatory commissions? The author thinks OPA will be: Rate Maker No. 1.

By LARSTON D. FARRAR

THE public utilities of the nation may as well recognize the fact that they must contend with a new rate maker, in addition to the dozens of city, state, and Federal agencies which have been exercising this prerogative over power companies, gas companies, railroads, communications, and related enterprises these many years.

The Office of Price Administration, much maligned for activities in other fields, continues to grow and spread, and although it was thought that its officials were staying busy enforcing thousands of regulations setting prices on everything from a urinalysis in a medical laboratory to the price of radishes, they have gone the whole route and are now regulating the over-regulated public utilities field.

OPA, in short, is now rate maker (or breaker) No. 1.

Exhibit No. 1 to show OPA's determination to supersede, if not ignore, established rate-making authorities created by Congress and state legislative bodies can be seen in Washington, D. C., headquarters of the sprawling price-fixing organization, which lost its first leader by popular action, but now has former Senator Prentiss M. Brown of Michigan as its director.

This exhibit is the case of the OPA *versus* the District of Columbia utilities commission *and* the Washington Gas Light Company, who may have fought against one another in the past, but who find themselves aligned in the struggle to throw off the restraints OPA would impose on both.

Briefly, this is the history of the case, which is important to other gas companies and public utilities because it is the first of its kind since OPA entered the utilities field:

Last October, the Washington Gas Light Company petitioned the

District of Columbia utilities commission for a rate increase designed to bring the company approximately $500,000 or $600,000 additional revenue in the ensuing year. The company cited the fact that rates had been based heretofore on a "sliding-scale" arrangement in which full costs of operation, amortization of bonds, and a fair profit margin were taken into effect, and that, in line with this policy, the company needed and deserved an increase in rates. The public utilities commission, after due hearings which were publicized widely each day by Washington newspapers, and were attended by many members of the public, granted a rate increase of $200,000 annually, effective November 16th.

ALTHOUGH the case had been widely publicized, it drew no comment either from the OPA or the Office of Economic Stabilization. These agencies, however, acted as soon as the PUC granted the nominal increase. Leon Henderson said he was "looking into the situation," and several days later the OPA petitioned the PUC to set aside the rate increase "to prevent inflation."

Its position was that, according to the congressional act of October 2, 1942, the so-called Economic Stabilization Act, any utility seeking an opportunity to increase its rates must give the President's representatives a "reasonable" opportunity to discuss the case to see whether or not it was "inflationary" under existing conditions. The gas company had in fact notified the government of its intention to seek a rate increase on October 15th, some days before the increase was granted.

Washington's public utility commission, the rate-making authority of the District of Columbia, declined to set aside the increase it had granted to the company, maintaining that the increase was "just." It took cognizance of the fact that both OPA and former Supreme Court Justice James F. Byrnes, now head of the Office of Economic Stabilization, had been informed of the contemplated action well in advance of the increase.

As a matter of fact, if any official of the OES or OPA had read a Washington newspaper for a week, he would have been blind, indeed, had he not noticed the company's intention to file for an increase. The news was carried in bold type each day.

UPON the refusal of the District of Columbia Public Utilities Commission to set aside its rate order, the OPA took the case to district court in Washington.

The new rates went into effect on November 16th and most consumers were surprised to notice little "inflationary" tendencies in their new bills. As a matter of fact, the inflation measured by increases in customer's bills amounted to approximately 3 cents a month in the case of the average gas consumer.

Customers as a whole had virtually forgotten the increase in rates when on February 1, 1943, Justice F. Dickinson Letts ruled in district court that the OPA and the OES were right and that the increase was null and that the case had to be returned to the PUC for consideration. His interpretation is interesting:

"I think the PUC erred in its belief that it could proceed in accordance

with the 1935 sliding-scale arrangement alone and in the face of the congressional act of October 2, 1942," the court said.

The act of October 2nd, the court observed, required that the commission give the President's representative a "reasonable" opportunity to present his case so that the commission might determine whether the formula agreed upon in the sliding-scale arrangement was inflationary in view of the changed economic and war conditions.

He added: "I think . . . the commission regarded the inquiry within narrow limits . . . and closed its ears to the insistent demands of appellants to give consideration to the new factors required by the act of October 2nd. In that respect, I find the action of the commission was arbitrary and illegal.

"The commission in good faith has sought to fulfill its obligations under the sliding-scale arrangements, but may have lost sight of the check upon it which has been voiced by the Congress . . . Any arrangement before October 2nd lacks public approval and must give way to congressional edict. The basic principles of the arrangements and other factors which inhere in the question of inflation and of fairness and justice are open for consideration."

BE that as it may, on February 26th, Senator Walter F. George, of Georgia, taking cognizance of OPA's entrance into new fields in its attempt to "cut profits," declared that "If price ceilings are to be used to cut excessive profits, then the OPA will be in a position of determining what are excessive profits without any standard for such a determination. Congress certainly had no such thought in mind when it set up the OPA to control prices."

Senator George, incidentally, called for immediate reorganization of OPA to "eliminate social and economic theorists."

On February 10th, Justice Letts granted the Washington Gas Light Company a stay of execution of his order of February 1st vacating the $200,000 increase allowed by the PUC. The order was stayed so that counsel for the company could take the case to the United States Court of Appeals, but denied the gas company's plea that the stay remain in effect until after a possible appeal is taken to the United States Supreme Court.

Meantime, most Washington consumers are waiting anxiously to get their 6-cent or 9-cent check from the Washington Gas Light Company. Several consumers have pointed out that this will make up, in part, for the extremely low rates the OPA paid

¶ "THE *Office of Price Administration, much maligned for activities in other fields, continues to grow and spread, and although it was thought that its officials were staying busy enforcing thousands of regulations setting prices on everything from a urinalysis in a medical laboratory to the price of radishes, they have gone the whole route and are now regulating the overregulated public utilities field.*"

them for their tires, turned in last December. Many reported receiving from 50 to 60 cents for tires that would have brought from $15 to $20 if sold on the market. But not having money enough to hire lawyers, and not having access to any special "administrative" funds given to the President, these consumers can do nothing except hope that the OPA will save them 3 cents a month on their gas bills.

Since it has been a long-time policy of the present administration to take cases in which it is crossed right up to the Supreme Court, it appears doubtful that the Washington Gas Light Company will get to keep its increase without going to the highest court in the land. To many observers, there is even more doubt about it when it gets there.

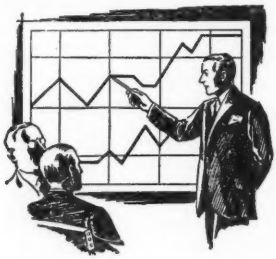
•

THIS Washington Gas Light Case is complicated by the fact that it involves the so-called Washington plan, which calls for sliding-scale profit-sharing rate adjustment. It is also complicated by the fact that OPA, previous to the effective date of the Economic Stabilization Act (last October 1st), had been allowed by the District commission to introduce about the same kind of evidence on alleged inflation which it subsequently introduced on its second appearance (after October 1st). The commission thereupon decided that OPA should be limited to the introduction of evidence bearing on the inflationary effect of the proposed increase and should not go into the merits of the Washington plan. The court agreed with OPA that the Washington plan, however successful under normal conditions, was subject to reëxamination in light of inflationary factors which the Economic Stabilization Act required to be considered.

If the district court's opinion is construed to mean that there is no limit on the right of OPA to introduce evidence on so-called inflationary factors (whether issues of valuation, return, taxes, expenses, etc.), the state commissions may as well abdicate control of their own procedure. True, this is not necessarily tantamount to giving the OPA direct veto power over proposed utility rate increases. Yet, it would give OPA virtual control of rate proceedings and the power to resort to such dilatory tactics that rate increase applications in many cases might well prove futile. This view, incidentally, clashes with the doctrine of presumption in favor of regulatory commission fact finding which the Supreme Court has been building up in other rate cases over the last decade. This will be an interesting point to watch in the appellate disposition of this case.

THE issue, in final analysis, is whether Congress intended to confine OPA's representation in rate cases to the question of direct inflationary effect. Or did Congress (notwithstanding its defeat of the Norris resolution) intend to give OPA authority to present evidence on basic questions of rate regulation?

More recently we were given evidence that the OPA will not only seek to block utility rate increases but will even move in an affirmative fashion to obtain utility rate reductions. This was indicated in the case of another District of Columbia utility, the Potomac Electric Power Company, which we might call No. 2 exhibit. Doubtless,



Power of Commission to Fix Rates

"THE normal concept of public utility regulation presumes that all proper parties to a dispute should have their day in court —which is to say, before the commission. But if the commission after hearing such evidence should decide against the complaining parties and fix rates which in its judgment yield a reasonable return, and if such rate orders are upheld on appeal by courts of competent jurisdiction, that is supposed to be the end of the matter."

OPA is intervening in this case under its general statutory authority to drive down prices affecting the cost of living instead of the Economic Price Stabilization Act of October 2nd, which gave the OPA formal right of intervention only in cases where rates were increased over levels prevailing September 15, 1942.

The Potomac Electric Power Company is not seeking any rate increase for 1943 under its Washington plan. It was at first believed this move might forestall OPA interference with the plan. However, when the annual electric rate hearings were held before the District of Columbia Public Utilities Commission on March 2nd, OPA sought to intervene with evidence purporting to show that the company's rates should be reduced and the entire plan reëxamined.

Furthermore, the Treasury Department and the Federal Works Agency joined in as important customers of the Potomac Electric Power Company with a demand that the rates should be reduced. Admittedly, the Federal government, with its vast array of public buildings throughout the city of Washington, has the usual regulatory right of any large customer to seek a reduction in such proceedings before the public utilities commission.

IT was noted, however, that the Treasury Department, the Office of Economic Stabilization, the OPA, and the Federal Works Agency seem to be acting in concert. Furthermore, there was an open threat that unless the rates were reduced the Federal government would resort to public ownership. There have even been suggestions to the effect that it might act under its Second War Powers Act to expropri-

ate utility property in Washington along the lines followed in Puerto Rico. Such threats hardly seem in keeping with the theory of public utility regulation—if such regulation is to be given the dignity of a judicial process.

The normal concept of public utility regulation presumes that all proper parties to a dispute should have their day in court—which is to say, before the commission. But if the commission after hearing such evidence should decide against the complaining parties and fix rates which in its judgment yield a reasonable return, and if such rate orders are upheld on appeal by courts of competent jurisdiction, that is supposed to be the end of the matter. In other words, it is like a game in which the decision of the umpire ought to be regarded as binding.

The threat of public ownership under such circumstances, therefore, would seem to be in the nature of a warning that government parties have no intention of abiding by the rules of the game if they lose, and that, if they don't get what they want by regulatory process, they will take it by force, to wit: expropriation.

EXHIBIT No. 3 to prove that OPA considers the utility rate-making field as its own ground today can be found in the case of this agency *versus* the Interstate Commerce Commission, one of the oldest, best-established rate-making bodies in the nation, which has done a passable job of fixing rates for public carriers so long it is a household word.

Yet, Max Swiren, attorney for the government agency, went before the ICC in Washington on February 11, 1943, and alleged that the railroads are not justified in keeping the rate increase granted them more than a year before by ICC, when it was proved conclusively that tremendous wage increases, higher operating costs, and other obvious factors made such an increase mandatory.

Mr. Swiren maintained that the railroads are making excessive profits from war business and that continuance of the increases threatened the anti-inflation program.

Mr. Swiren, however, did not explain how the refunds would be made if the ICC reversed itself. And he made no mention at all of the fact that a full year had passed before the thousands of OPA and OES employees, headed by Messrs. Henderson, Brown, and Byrnes so far, recognized the "threat of inflation" in the increases.

It is assumed that one of these gentlemen took a trip on the trains last November or December, noticed the crowded conditions, and decided it would be a good time to open up on the railroads, which, while maintaining excellent service in view of the demands, cannot promise anybody a seat every time he wants one.

James M. Souby, general solicitor for the Association of American Railroads, declared that the proposal to take away the increases because of higher earnings by the carriers was "equivalent to penalizing the performance of an efficient worker by cutting the rate per piece he is paid." He said—and proved—that the railroad rates today for hauling one ton of freight one mile are lower, on an average, than at any time since 1918. The railroads, it will be recalled, were in the hands of the Federal government in 1918.

To a visitor from Mars, the actions of OPA and OES in getting into the public utility rate-making field would appear strange, since he would see readily that state utility commissions, the ICC, the FPC, the FCC, and many other bodies already are covering these fields thoroughly. To get any sense at all out of these OPA policies, the Martian visitor would have to be informed of the fact that one of the first aims of a small but active group is to attack public utilities and all private enterprise; secondly, to make it unprofitable for them to do business, thus leaving the public with only one alternative —government subsidy and government operation.

If one considers this a far-fetched idea, he need only turn to the writings of the men who shape OPA's policies. For one example (many could be given), we end with a quotation from an article written by A. C. Hoffman, chief of OPA's food price division:

> It is not possible on the basis of present information even to approximate how much the needless duplication of marketing facilities at all stages of food distribution adds to marketing spreads. But it can be asserted positively that the number of retailing, wholesaling, processing, and assembling establishments has multiplied out of all proportion to what would be needed *if food distribution were organized on what might be called a social-engineering basis.* . . .

This is a direct quotation taken from an article on page 635, written by Mr. Hoffman in the 1940 "Yearbook of Agriculture," published by the U. S. Department of Agriculture. You can be sure that there are many in OPA who are of the same opinion.

Editors Note.—For the published decision in the Washington Gas Light Company Case, see Byrnes *v. Flanagan* (1943)—F Supp —, 47 PUR(NS) 1, reviewing (1942) 46 PUR(NS) 1, 45, 50.

Businessmen in Washington

"FROM *the time when the defense effort was first launched there has been criticism from left-wing sources, both within the administration and in Congress, of businessmen in government posts. Congressional investigations have been launched. A wide variety of charges have been made against them, usually built around the contention that they might serve the interests of the corporation or industry which employed them.* . . .

"As the nation becomes fully mobilized for all-out warfare, it will become more necessary than ever to utilize all available ability, talent, and experience for winning the war. It would be unfortunate indeed if distrust of businessmen, born of the pre-war social reform era, should reappear to hamper or limit the effectiveness of these men in filling the exacting and trying jobs to which they have been called because of their ability to fill them successfully.

"Sniping at businessmen in Washington from the left should cease, in the interest of the war effort."

—EDITORIAL STATEMENT,
The Journal of Commerce.

Wire and Wireless Communication

On March 22nd, J. A. Krug, Director of the Office of War Utilities, signed Order U-2, which is in effect a revision of L-50. This order formerly established WPB limitations under which critical telephone materials and equipment could be used. The principal features of the new Limitation Order U-2 are as follows:

1. Telephone companies are required to limit the total number of main stations and PBX trunks which they connect to any single office exchange to 105 per cent of the number which such equipment was designed to service (except where an exchange is designed to serve less than 1,000 main stations).

2. No further installations of residence extensions, residence PBX, or jacks and plugs for use with residence phones.

3. No additional main or party-line installation to be installed as a substitute for residence extension.

4. In case of serious illness, temporary extensions are permitted.

5. No copper or copper weld open wire to be used in exchange line plant. (It can be placed in a toll line plant.)

6. No further installation of dial PBX or dial intercommunicating systems. (Dial units of 100 lines or less still in stock may be installed.)

7. Additions to or relocation of the above (No. 6) is permissible for an essential requirement.

8. All new or reconnected subscribers will be on an *interim basis*, subject to regrading or disconnection where necessary.

9. Idle facilities may be reserved where necessary to meet promptly normal or fairly anticipated prospective essential requirements.

10. No further installation of teletypewriter service, except for essential requirements.

11. No more than two spans of drop wire on existing cable or open wire leads will be permitted for nonessential subscribers in exchanges which serve less than 1,000 stations. Only one span in exchanges serving more than 1,000 stations is permitted, except that where the first span is less than 75 feet, two spans may be installed if needed. (This limit refers only to drop wire paralleling existing open wire or cable plant; it does not limit drop wire run from the main lead to the subscriber's premises.)

12. Replacements of metal equipment and facilities will be limited to essential requirements of maintenance and repair, except for the armed forces, emergency, or regrading.

13. Interim subscribers must be disconnected or regraded where necessary (and feasible) to permit new connection for an essential requirement. Disconnections will be made in the reverse of the dates of connection, business service having preference over residential service.

14. Necessary "essential" subscribers may also be regraded to provide service for additional "essential" subscribers.

15. No further additions to existing exchange central office or outside plant permitted except for the following: (a) necessary maintenance and protection of service; (b) "essential" service; (c) public pay stations; (d) 200 pounds of steel wire for metallic lines and 100 pounds for grounded lines for rural food-producing subscribers; (e) additional cable terminals on existing cable plant to expose vacant facilities otherwise not usable.

16. Foregoing replacements and additions must be engineered for only one-half of the normal period and in no event more than three years (although cable pairs for carrier circuits may be engineered on the basis of one-half normal period in any event.)

17. Exemptions from limitations imposed under U-2 are permitted for projects approved and rated under PD-2 applications, Form PD-685, and direct orders of the War Production Board. (Projects commenced before the date of U-2 are also exempt.)

18. At least a 2-year record on the quantity of steel wire and main stations connected for food producers must be kept.

19. Appeals may be taken in cases where U-2 would result in exceptional or unreasonable hardship.

20. "Essential" requirements under Schedule A of U-2 include service for the following: the armed forces, governmental offices, foreign government agencies, doctors, business, or public organizations connected with public health, public utilities, press and radio, churches and schools, wholesale and retail food organizations, war plants, and housing developments.

On March 27th Mr. Krug also signed another order for the OWU Communications Division affecting priority ratings for telephone companies. This replaced the old repair and maintenance order, P-130. It will give the telephone companies a priority rating of AA-1 and a similar "MROU" rating with respect to the use of controlled materials for repair and maintenance. It will also provide further inventory restrictions. It will authorize telephone manufacturers to act as clearing houses for the resale between operating companies of surplus inventory items listed.

* * * *

IMPROVED design of high-frequency telephone wires and other war-time communication lines, effecting a saving of strategic copper, may be possible from research work by Dr. B. R. Teare, Jr., and his assistant, Mrs. Josephine R. Webb, of the Carnegie Institute of Technology.

Copper covered steel wire is just about as good as solid copper wire except at the lowest frequencies, the scientists discovered. Wide use is being made of a copper covering welded to a steel core because the great strength of this wire permits poles for the wires to be spaced far apart and saves large quantities of copper.

Resistance of copper covered steel at ordinary power frequencies was known, but performance in the increasingly important range up to 150,000 cycles had not been charted previously.

Communication systems can be designed to fit both the material available and war-time requirements without the delay of testing the conductor by using the formulas announced by Dr. Teare and Mrs. Webb.

* * * *

A LARGE-SCALE program of postwar construction and new capital financing was forecast by Charles P. Cooper and Mark R. Sullivan, financial and operating vice presidents, respectively, of the American Telephone and Telegraph Company, in the current issue of *Bell Telephone Magazine*, recently released.

Mr. Cooper, in an article entitled "Financing Telephone Growth," stated his belief that $1,000,000,000 to $1,500,000,000 may be needed within ten years

following the time when materials again become available, and that "several hundred million dollars may be needed in each of the first few years of that period." Mr. Sullivan pointed out that there are also numerous speculative developments, including television transmission over coaxial cables and transatlantic telephone transmission by submarine cable, which are not included in the $1,500,000,000 estimate.

Among the items included in the estimate are the following:

1. Equipment to fill "held orders" which cannot now be met because of lack of facilities. These orders now number more than 400,000, and are expected to increase rapidly before materials again become available.
2. Facilities to relieve the present seriously overloaded condition of telephone plant. Normal plant margins must be restored, and in many cases this will involve replacement of plant built in war time.
3. Reconstruction and relocation of many telephone lines because of highway and other postwar construction programs.
4. Resumption of the program of converting telephones to dial service.
5. Replacement of older types of telephone instruments by newer types.
6. Extension of means by which telephone calls over toll lines can be dialed, either by the person making a call or by an operator.
7. Further replacement of open-wire toll lines by cables.
8. Extension of overseas telephone service to additional points.
9. Wider establishment of time and weather announcement services.
10. Extension of radiotelephone service to motor vehicles and boats of inland waterways.

Such a program, Mr. Sullivan pointed out, means building one-third as much plant in a few years as the Bell system has built in sixty-five years of growth. "How fast the Bell system will be in a position to raise the vast sums required," he concluded, "depends almost entirely upon how well it sustains its credit position during the war."

DISCUSSING the financing problem in greater detail, Mr. Cooper emphasized the system's need for earnings adequate to attract new equity capital. "The Bell system companies," he observed, "have been able to obtain a limited amount of bond money at cheap rates. But it would be a mistake to suppose that they could continue to obtain very much larger amounts at the same cheap rates."

Ability of the Bell system companies to issue bonds at low rates of interest, Mr. Cooper continued, "has been due to the low proportion of funded debt and the large backlog of equity capital. Of course, it has been possible to maintain this equity backlog only by frequent stock financing in large amounts. The reason, and the only reason, why this continued stock financing was possible is that the earnings, and of course I mean earnings after taxes, were satisfactory to the investors. The argument that regulatory bodies should reduce Bell system earnings because of its high credit standing starts a vicious circle. The credit is high because the earnings are good, and have been satisfactory to the investors."

* * * *

A NEW channeling system that is quietly revolutionizing the printing telegraph art is known to engineers as "Varioplex" and to the public as "telemeter." It is the invention of Philo Holcomb, Jr., of Great Neck, New York.

In the conventional Multiplex system the speed of the circuit is equally divided among its channels, regardless of whether they have anything to send. If intermittent traffic is put on a Multiplex channel, a serious loss of circuit efficiency is experienced.

On the Varioplex, however, a local "seeking" device predetermines the channels which wish to send and constantly divides the line time among them. Since the idle channels are always skipped by the "seeker" the efficiency of the Varioplex circuit is 100 per cent until the traffic from all channels has been disposed of.

There is a great convenience in channeling because channels can be used as they are for separate units of communication or extended indefinitely by connecting them to channels of other circuits. Multiplex channels are few and precious as a division of the circuit into more than four parts results in a channel speed that is usually too slow for economical operation. Good Multiplex channels, therefore, cannot be put into many combinations or intermittent services without exhausting the supply or reducing the efficiencies of the circuits.

* * * *

ST. PAUL would get $338,000 under a bill in the Minnesota legislature proposing to return to municipalities the telephone gross earnings taxes collected within their borders. Revised estimates were presented to the state house appropriations committee last month.

Representative Warren S. Moore of Duluth appeared before the committee with figures obtained from the state railroad and warehouse commission. These indicated that if the bill were to pass, St. Paul would get $338,000, Minneapolis $728,000, and Duluth $106,000. Earlier estimates had been considerably lower.

Representative Claude Allen of St. Paul, chairman of the committee, showed little sympathy for the measure, pointing out it would require a state tax levy of a mill and one-half to replace the money it is proposed to turn over to the municipalities.

Moore declared that many Minnesota municipalities have been hard hit by the state policy of collecting gross earnings taxes from utilities in lieu of real estate taxes. Half of Duluth's real property is now tax exempt, he said. No action was taken on the bill at the time.

* * * *

ABOUT one-third of the 3,000,000 radios on the nation's farms are now silent and many more are going out of commission daily, it was learned recently at the Department of Agriculture in Washington.

A war-induced shortage of dry cell batteries, officials said, had caused the radios to stop functioning. Estimates of the number of radios silenced ran from 10 to 40 per cent, but most officials agreed that probably about one-third of the sets were no longer working.

War Production Board officials were reported working to ease the situation by recommending a small increase in production of the batteries. Officials were concerned, because, it was said, one-half of the 6,000,000 farm families have battery-powered sets.

The survey, made in Iowa, Kentucky, Oklahoma, Georgia, and Illinois rural counties, found also that many farmers are rationing their radio use, that some dealers have long waiting lists for batteries, and that other dealers refuse to accept more orders.

An Iowa farmer, in writing to a radio station, said, "I could get along without sugar or coffee, or I could even go barefoot, but when we can't get batteries for our radio it is just terrible."

* * * *

ENACTMENT by Congress last February of legislation permitting but not requiring the merger or consolidation of domestic telegraph companies and operations presents certain possibilities of advantage, should a merger take place, but there are many difficulties because of the conditions imposed by the legislation, A. N. Williams, president of Western Union Telegraph Company, said in the pamphlet report for 1942.

"The management will give the subject careful attention and fully explore its possibilities," Mr. Williams said. "If agreement can be reached upon a satisfactory plan, and the plan is approved by the Federal Communications Commission as required by the merger act, the plan will be promptly submitted to the stockholders for their consideration."

As reported in the preliminary statement recently, the company had net income of $9,354,442, after $5,183,000 Federal taxes on income, the best since 1929 and a gain of $1,988,202 over 1941, but this represented only a return of 5.2 per cent on capital and surplus.

Financial News and Comment

By OWEN ELY

North American Company

(Third in a series of descriptions of holding companies.)

North American Company, which controls operating companies in the Middle West, with total assets of about $869,000,000, has been ordered by the SEC to divest itself of all properties except Union Electric Company system. On January 13th the U. S. Circuit Court upheld the constitutionality of the commission's order but the Supreme Court has agreed to review this decision.

The SEC order, if carried out, means that the company would have to dispose of St. Louis County Gas Company, Wisconsin Electric Power Company (in which it has about a 94 per cent equity interest), Cleveland Electric Illuminating (79 per cent interest), and some small miscellaneous subsidiaries. The company also has substantial investments in Washington Railway & Electric Company, Pacific Gas and Electric Company, North American Light & Power Company (which indirectly has an interest in Illinois-Iowa Power Company), and a small remaining interest in Detroit Edison. (The company has for some years been distributing to its common stockholders some of its holdings of Washington Railway & Electric and Detroit Edison in lieu of cash dividends, this policy permitting a substantial debt reduction.)

As of December 31, 1942, the system capitalization was as follows:

	Millions of Dollars	*Percentage*
Subsidiaries		
Funded debt	$249	41%
Preferred stocks	99	17
Minority interest	14	2
North American Company		
Funded debt	$38	6%
Preferred stock	65	11
Common stock equity	135	23
	$600	100%

North American Company derives from common dividends almost its entire gross income which in 1942 amounted to $18,679,901. On a percentage basis, income was received as follows:

Union Electric	31%
Cleveland Elec. Illuminating	22
Pacific Gas & Electric	21
Washington Railway & Electric..	10
Wisconsin Electric Power	6
Detroit Edison	4
St. Louis County Gas	3
Other income	3
	100%

North American Company's expenses, taxes, and interest aggregated $3,605,179 and preferred dividends were $3,821,254, leaving a balance of $11,253,468, which amount was largely devoted to debt retirement. In 1941 the company's three issues of debentures were reduced from an aggregate amount of $70,000,000 to $48,950,000, and in 1942 there was a further reduction to $38,650,000. This process is being currently continued, $337,000 bonds having been retired by sinking fund February 1st, while another $3,000,000 was called for redemption April 15th. At the present rate of retirement, therefore, the entire funded debt should be wiped out within two or three years.

Even if the company sold all its holdings other than Union Electric Company and subsidiaries, and used the proceeds entirely to retire bonds, the income from Union Electric alone should

be sufficient to take care of North American Company's expenses, taxes, and preferred dividends. However, with income from other system holdings amounting to nearly $13,000,000, obviously only a portion of these holdings would have to be liquidated in order to insure the retirement of the remaining $35,988,000 bonds. It is probable that if the management should wish to do so it could retire both bond and preferred stock issues—approximately $101,000,000 par value—from the proceeds of properties other than Union Electric, since this would mean capitalizing the earnings from these investments at only about eight times earnings—a very low ratio considering the high-grade character of most of these investments. However, assuming that such a program were carried out, and that the common stock were then left with only the equity in Union Electric, there would be equity earnings of about 75 cents a share for the common (disregarding corporate overhead of North American, which would be greatly reduced).

High-grade utility operating company stocks are currently selling around ten to fifteen times earnings. Should the earnings (from investments other than Union Electric) be capitalized at ten times, there would remain about $1.18 a share for the common; and at twelve times, about $1.38. The latter figure compares with the actual corporate earnings in 1942 of $1.31 a share for North American common stock. (Consolidated earnings were $1.72.) The common stock is currently selling around 13 (1942-43 range, 6½-13⅝; 1941, 9½-17⅜; 1929-1940, 186¾-9). At 13 the stock is selling at about nine and one-half times the corporate earnings and about seven and one-half times equity earnings.

In 1942 each share of North American common received four-fiftieths of a share of Detroit Edison which at the current market price around 18 would be worth about $1.44, equivalent to a yield of over 11 per cent at the current price of North American.

North American's two preferred stocks, which pay $3 and $2.875, are selling around 53 and 52, respectively. (They are callable at 55.)

President Shea in his annual report called attention to the tax problem of the utilities as follows:

> The proper coördination of cost trends, tax burdens, and rate structures presents a problem which demands careful study. Because of the strong position it has built up in the past, the industry of which we are a part has been able to provide the facilities needed in this emergency, for the most part without seeking additional equity capital. It cannot continue on these lines indefinitely. Its expansion hereafter will call for the investment of additional equity capital. It is therefore essential that government and management develop a constructive policy with regard to rates and taxes, to enable the companies constituting the industry to enter the postwar period with a record of earnings which will attract this equity capital, so that they may participate effectively in the vital task of building a prosperous peace-time economy founded on full productive employment.

Standard Gas & Electric Recapitalization Plan

Standard Gas & Electric Company has filed a recapitalization plan with the SEC providing for reduction of the six classes of outstanding notes and debentures and four classes of stock to one short-term loan and "A" and "B" common stock.

Under the plan each $1,000 bond would receive the following: $500 cash, 5 shares of California Oregon Power common stock, 2 shares of Mountain States Power common, and 23 shares Standard Gas new "A" stock. The "A" stock will be entitled to cumulative preference in dividends (to the extent earned) up to 85 cents per share annually.

In order to raise approximately $29,601,100 cash required under the plan, the company proposes to liquidate its holdings of Pacific Gas and Electric for about $5,010,500, and to arrange a 3-year collateral loan for $21,000,000, using treasury funds for the balance.

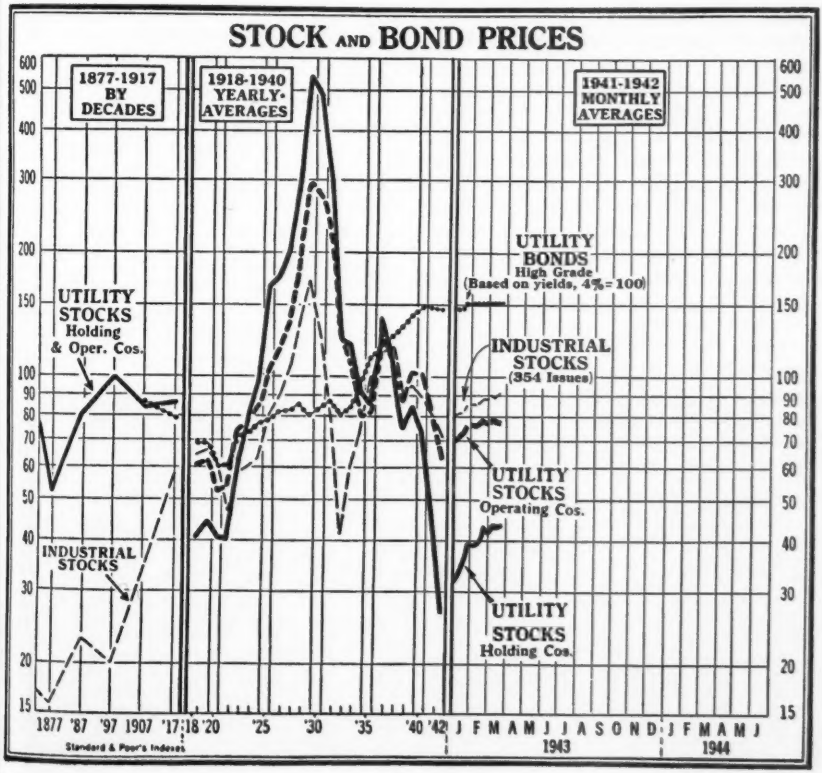
Holders of the $7 prior preference stock would receive for each share 7.3 shares of class B common, the $6 prior preference would receive 6.3 shares, and the $4 preferred .23 shares (the exchanges including all dividend arrears on the three classes of stocks). The common stock would receive nothing under the plan.

Taking an estimated value of $18 a share for California Oregon Power and about $5 for the new Standard Gas "A" common, the total value works out at about 76 or approximately the present price of the bonds. At the present price for the $7 prior preference around 21, the equivalent value for the new "B" stock would be about 2⅞.

Based on a *pro forma* consolidated income statement for the year 1942, net income for the "A" and "B" stocks together was $1.29 per share. However, on a preference basis earnings available for the 85-cent dividend on the class A stock would be about $4.62 per share.

SEC Intervention Sustained By Court

FEDERAL Judge Leahy at Wilmington granted the SEC the right to continue its intervention in Illinois-Iowa Power Company's litigation with North American Light & Power, parent company. The commission is already considering liquidation of North American Light & Power, and wished to consider the claim of Illinois-Iowa (variously estimated at $20,000,000 to $40,000,000) in connection with the dissolution ques-



tion. Judge Leahy said in part as follows:

> A stay is appropriate where there is another proceeding pending between the same parties and with the same issues, for the obvious reasons of resultant economies and comity. . . . The commission may have no precise authority to render a monetary decree in favor of the plaintiff and against the defendant in this case, at the termination of the proceedings now pending before it, yet the outcome of those proceedings will result in a plan of liquidation allotting to all claimants whatever the commission finds to be equitably due to each of them.

The SEC has granted an extension to July 22, 1943, of the time in which North American Light & Power can comply with the dissolution order of December 30, 1941.

The principal claims put forward by Illinois-Iowa Power Company were: (1) the sale by North American Light & Power Company to the company in September, 1932, of all of the securities of Central Terminal Company at a price which appears to have been much higher than the real value of these securities at that time; (2) the payment of dividends to North American Light & Power Company through Illinois Traction Company during the years 1927 to 1932, inclusive, during a period when the company appears to have had no net profits or surplus out of which to declare or pay these dividends; (3) the payment to North American Light & Power Company in the years 1923 to 1933 of excessive management fees; (4) the failure of North American Light & Power Company in certain years prior to 1932 to pay interest on its indebtedness to the company.

North West Utilities to Distribute Assets

NORTH West Utilities Company, $101,000,000 subholding company of the Middle West system, proposes to sell its miscellaneous assets for cash and to distribute the common stocks of its subsidiaries to its own stockholders, at prices to be approved in the first instance by the board of directors. Subsidiaries are Lake Superior District Power Company, Northwestern Public Service Company, and Wisconsin Power & Light Company. Holders of the prior lien preferred stock would receive an amount equivalent to $100 for each share plus accrued dividends, the balance being distributed to the $6 and $7 preferred (no provision being made for the common). Middle West owns about 60 per cent of the prior lien stock, 35 per cent of the 7 per cent preferred, and all of the 6 per cent preferred and common. It will probably redistribute to its own stockholders the securities which it receives, unless a sale is promptly arranged.

This is apparently the first instance in which a company has proposed to make a division of assets between senior and junior security holders, in accordance with a valuation of security prices fixed by the board of directors. It will be interesting to see whether this procedure meets with the approval of the SEC. This method would prove a convenient short-cut in effecting the dissolution of many holding companies, provided it did not result in litigation and delays.

Original Cost "When First Devoted to Public Service"

PUGET Sound Power & Light Company, in connection with its proposed issue of $52,000,000 first mortgage bonds, has issued in its prospectus a *pro forma* balance sheet showing a reduction in net plant value of about 15 per cent. While the balance sheet notes present a long and detailed story regarding these adjustments, the net result seems to be that property has been written down to original cost, with the exception of an item of $7,311,424, "going concern value purchased," which may be disposed of later. Apparently the company has made substantial concessions to the desire of the FPC and the SEC to reduce plant value to basic "original cost." The SEC can, of course, bring considerable pressure to bear on companies which wish to effect refunding or recapitalization programs.

In this connection a statement in the annual report for 1942 of American

Water Works & Electric Company is of interest:

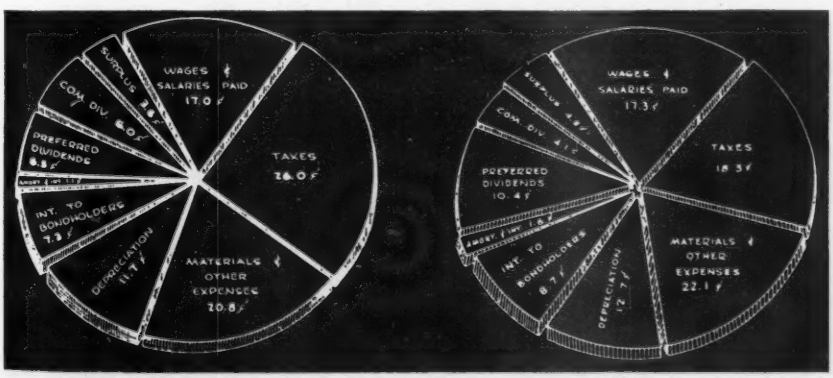
There are indications that the advocates of public ownership have not relaxed their efforts even in war time and that serious efforts continue to be made to have the "fair value" rule, which has been the law of the land for almost fifty years in connection with the determination of fair and reasonable rates, superseded by what the advocates of change choose to call the "original cost" or the "prudent investment" rate base theory. . . . "Original cost" generally is defined to mean the cost of the property to the person first devoting it to public service. Aside from the time and expense involved in making the necessary studies, we do not object to the determination of the actual cost of the properties and the segregation and identification of such cost so that it will be available for such use, if any, as may properly be made of it. The use of "original cost," however, as the sole test of value for rate-making purposes, or capitalization or other phases of utility regulation, is grossly unfair and inequitable. The adoption of such a standard would ignore present values and the costs actually incurred by present owners and would represent a violent departure from the long-established "fair value" rule laid down by the Supreme Court which has been relied upon for years by regulatory bodies in fixing rates and authorizing the issue of securities and by owners of utility properties and their security holders in making their investments. Its adoption would be retroactive action of exceedingly serious import. The change cannot be made without substantial losses to present owners and investors. It should not be made in any case merely by administrative rulings or by court decision. Such a momentous change in the long-prevailing law of the land, if made at all, should be effected only through express legislative action within constitutional limitations and with full protection of existing rights.

These matters affect all security holders in varying degree. They should be of deep concern to you, and especially to the common stockholders, because they affect the value and dividend prospects of equity securities.

Where the Revenue Dollar Goes

LAKE Superior District Power Company (Middle West system) is a relatively small operating company, but its annual reports for some years have included a "pie" chart showing the disposition made of the company's revenue dollar. The figures are of interest as showing the excellent control over material and labor costs in a war-time economy, and the fact that the increase in taxes from 18.3 cents to 26 cents out of each dollar (in three years) was largely offset by refunding of the company's bonds and preferred stocks. Most other companies have not been able to offset the increased tax burden so fully, and common stockholders have had to pocket the loss. It is suggested that other utility operating companies present similar charts to their stockholders, to graphically illustrate financial trends.

ANALYSIS OF REVENUE DOLLAR, 1942 *v.* 1939
Lake Superior District Power Company



1942 1939

INTERIM EARNINGS REPORTS

	End of Periods	12-month Period Last	Prev.	Inc. %	3-month Period Last	Prev.	Inc. %
Electric-gas Holding Companies							
American Gas & Elec. *Consol.*	Jan.	$2.14	$2.71	D21%	$ .69	$ .71	D2%
Amer. Power & Lt. (pfd.) *Consol.*	Nov.	6.02	5.44	10	3.15	1.02	208
Parent Co.	June	2.98	4.72	D37	.43	1.23	D65
American Water Works *Consol.*	Dec.	1.06	1.11	D5	..	..	..
Parent Co.	Dec.	.13	.47	D72	..	..	..
Columbia G. & E. (1st pfd.) *Consol.*	Dec.	8.96	10.66	D16	3.77	2.55	48
Commonwealth Edison *Consol.*	Dec.	2.75	3.23	D15	..	..	..
Com. & Southern (pfd.) *Consol.*	Feb.	7.70	7.98	D3	2.93	2.42	21
Elec. Bond & Sh. (pfd.) *Parent Co.*	Dec.	4.26	6.92	D39	..	..	..
Elec. Pr. & Lt. (1st pfd.) *Consol.*	Nov.	11.44	9.42	22	3.22	2.20	51
Parent Co.	Nov.	1.37	1.63	D16	..	..	..
Eng. Pub. Service (common) *Consol.*	Dec.	.96	1.27	D25	..	..	..
Parent Co.	Dec.	.06	.48	D87	..	..	..
Federal Lt. & Trac. *Consol.*	Sept.	1.23	1.66	D26	.27	.38	D29
L. I. Lighting (pfd.) *Consol.*	Dec.	3.54	3.10	14	..	..	..
Parent Co.	Dec.	5.14	3.92	32	..	..	..
Middle West Corp. *Consol.*	Sept. (a)	.96	.78	24	.41	.37	11
Parent Co.	Sept. (a)	.27	.36	D25	.07	.08	D13
Nat'l. Pr. & Light *Consol.*	Nov.	.69	1.06	D35	.20	.09	122
Parent Co.	Nov.	.11	.33	D67	..	..	..
Niagara Hudson Pr. Co. *Consol.*	Dec.	.29	.66	D56	..	..	..
Parent Co.	Dec.	.12	.03	300	..	..	..
North Amer. Co. *Consol.*	Dec.	1.72	1.81	D5	..	..	..
Parent Co.	Dec.	1.31	1.59	D18	..	..	..
Nor. States Pwr. (Del.) (cl. a) *Consol.*	Dec.	5.87	7.85	D15	..	..	..
Ogden Corp.	June (b)	.03	.02	100	..	..	..
Pub. Serv. Corp. of N. J. *Consol.*	Feb.	1.11	1.88	D41	.51	.81	D37
Std. Gas & Elec. (pr. pfd.) *Consol.*	Dec.	12.06	6.20	95	..	..	..
Parent Co.	Dec.	2.43	2.39	2	..	..	..
United Gas Improvement *Consol.*	Dec.	.56	.77	D27	..	..	..
Parent Co.	Dec.	.48	.72	D33	..	..	..
United Lt. & Pr. (pfd.) *Consol.*	Dec.	11.44(c)	6.10(c)	88	..	..	..
Parent Co.	Dec.	2.00	1.55	29	..	..	..
Electric-gas Operating Companies							
Boston Edison	Dec.	4.35	4.36	..	..	..	..
Conn. Lt. & Power	Dec.	2.50	2.94	D15	..	..	..
Cons. Edison N. Y. *Consol.*	Dec.	1.79	2.00	D10	.75	.50	50
Parent Co.	Dec.	1.81	1.98	D9	.73	.37	.98
Cons. Gas of Balto. *Consol.*	Dec.	4.20	4.64	D9	..	..	..
Detroit Edison *Consol.*	Feb.	1.27	1.91	D33	..	..	..
Hartford Elec. Lt. Co.	Dec.	2.47	2.95	D16	..	..	..
Indianapolis P. & L. *Consol.*	Dec.	1.99	2.47	D19	..	..	..
Pacific Gas & Elec. *Consol.*	Dec.	2.21	2.31	D4	..	..	..
Public Service of Indiana	Jan.	1.84	2.09	D12	..	..	..
San Diego Gas & Elec.	Nov.	.94	1.20	D22	..	..	..
Southern California Edison	Dec.	1.59	2.42	D34	..	..	..
Gas Companies							
Amer. Lt. & Traction *Consol.*	Sept.	1.85	1.89	D2	..	..	..
Brooklyn Union Gas	Dec.	1.75	2.08	D16	..	..	..
El Paso Natural Gas *Consol.*	Dec.	3.32	3.38	D2	..	..	..
Lone Star Gas *Consol.*	Dec.	.89	1.06	D16	..	..	..
Oklahoma Natural Gas	Jan.	3.34	3.79	D12	..	..	..
Pacific Lighting *Consol.*	Dec.	3.51	3.35	5	..	..	..
Peoples Gas Light & Coke *Consol.*	Dec.	6.10	6.53	D7	1.97	1.94	1
Southern Natural Gas *Consol.*	Dec.	1.68	2.34	D28	..	..	..
United Gas Corp. (1st pfd.) *Consol.*	Nov.	18.82	13.66	37	4.45	3.00	48
Parent Co.	Nov.	14.50	9.10	59	..	..	..
Telephone and Telegraph Companies							
American Tel. & Tel. *Consol.*	Dec.	8.57	10.26	D16	..	..	..
Parent Co.	Dec.	8.62	10.01	D14	1.98	2.31	D14
General Telephone *Consol.*	Dec.	2.22	2.86	D22	..	..	..

D—Deficit or decrease. (a) Nine months. (b) Six months. (c) Estimate based on report of United Light & Railways Company.

What Others Think

Nation's Press Cool toward NRPB Report

THE National Resources Planning Board blueprint for postwar national economy, submitted by President Roosevelt to Congress, received a cool reception from the nation's press generally. Some Congressmen likewise criticized the plan; others reserved judgment; and many said that they were too busy to study the 480,000-word, 2-volume work of the NRPB. It was generally predicted that the plan would be pigeonholed.

Summarizing, here are some of the criticisms:

(1) The cost would be prohibitive;
(2) the plan is revolutionary and socialistic;
(3) it would alter the United States as we know it beyond recognition;
(4) under it the government can become a partner in whatever business or industry it chooses;
(5) it makes the United States citizen a creature of regimentation;
(6) it would serve to reduce the social status of all mankind, forcing the upper half down, rather than encouraging the lower half to rise by individual initiative;
(7) Congress wants to draw up its own plan and make its investigators directly responsible to Congress and not to the President.

It was generally agreed, in editorial comment, that the recommendations contained some important elementary general principles to be applied immediately after the war, such as orderly demobilization of the armed forces and war workers and war industries, and gradual relaxation of price and wage controls, as well as continued rationing of consumer goods and allocation of scarce materials and equipment.

SIGNIFICANT in the mass of comment was that in which *PM*, New York daily tabloid, quoted Dr. Eveline M. Burns as saying: "Whatever the present Congress may do about the report, it is our hope that it will influence the thinking of the people for a long time to come. We want this book to be a way of educating the people in the needs of the country and we want it to be easy to use." Dr. Burns is director of research for the NRPB. She is credited with having written, edited, and indexed at least four-fifths of the voluminous project.

The Pittsburgh (Pennsylvania) *Press* commented that a few of the board's objectives, such as labor control over management of industry and government partnership in some lines of enterprise, will be debated by many citizens. It went on:

> . . . But the greater goals of broader programs of health and social security, wider educational opportunities, assurance of the right to work to all who want to work, and especially jobs for the men who have borne the battle—these are objectives from which none will dissent.
>
> We want to provide all these—to the limit of our ability to provide.
>
> Congress should dare to have vision in considering these proposals. No society can remain static. It must advance or sink. But, with that vision, we must of necessity mix the leaven of hard-headedness and tough-mindedness. We must start from the basic truth that, when this war is over, we will be poorer than when it started—poorer in lives lost, bodies crippled, billions of tons of oil and coal burned, billions of tons of metal shot away. War is the most extravagant destroyer of human and material resources, and this is the most extravagant of wars.

The Birmingham (Alabama) *News* expressed the opinion that most persons approved the general aims of strengthening social security, but on specific plans agreed that there would be differences.

The report is likely to prove to be a public document of "epochal importance," the paper said. It continued:

> . . . It represents the results of careful, thorough study and research over a period of several years. The NRPB was engaged in exhaustive studies of our economic and social problems before the war started in Europe, and after the outbreak of war it began to place emphasis on postwar readjustments.
>
> The lengthy report submitted by the NRPB will undoubtedly furnish the basis for much controversy during the next few months, and perhaps for the next few years, depending partly on how long the war lasts. The controversies should be wholesome; certainly it is to be hoped they will be.
>
> In any case, there should be full public discussion of the recommendations, many of which represent departures from previous economic and social practices. Such recommendations are not to be rejected out of hand for that reason alone, however. We must not allow ourselves to forget that we had serious national problems before this war, and we are going to have them again, perhaps in worse form, after the war unless we take steps to meet them intelligently.

The Detroit News expressed itself as ready to defend the board stoutly for making a first-class case for planning, especially as it pertains to the immediate war aftermath, on which problem the paper said the board has done a "bang-up" job.

But it says the longer-range plan for the future presents some distinct problems, stating:

> We do not know whether these plans would work, though memory of the period 1933-41 insistently suggests that we reserve a generous doubt about it. We do know that the chances of their being applied in anything like the form proposed are comparatively slight.
>
> That is one difficulty about long-range planning in a democracy. The planners may propose, but it is the people in their wisdom who make the dispositions. One instant reaction to the plans of the National Resources Planning Board has been the move by Congress to make some postwar plans of its own. It was ever thus, in a free country.
>
> But let no one mistake us as hedging on our first-expressed approval of this board. Plans furnish the best possible basis for discussion, which in a democracy is the means by which we arrive at our objectives.

TIME magazine took cognizance of the request of the President to Congress that it consider these matters fully during this session, and added:

> The President well knew that the Seventy-eighth Congress (1) could not possibly legislate anything concrete out of 480,000 words of foggy good will, (2) was in no mood to do it anyway. NRPB had already been disowned by Congress: The House had refused to approve a $1,400,000 appropriation to keep it alive next year.
>
> At week's end Congress had, as one man, turned its face away from the plan. Without a word of debate, the Senate set up its own postwar economic committee, headed by Georgia's conservative Walter F. George, whom the President had tried to purge in 1938. Said Senator George: "About the only thing we can accomplish is to get a start on hearings. . . ."
>
> Franklin Roosevelt announced blithely that the burden of planning now rested entirely on Congress. His plan, widely unread, widely undebated, the flop of the year, was now just a matter of record, stuffed away in a congressional pigeonhole.
>
> To implement this program and to carry it through, the President would need a wholly new and reinvigorated political group behind him, such as he has not had since 1937. Yet he had not just thrown his plan down a rain barrel. He has remarked to friends that social security is a powerful mixture to keep in mind for 1944. As a fourth term campaign issue, the Roosevelt social security program was better unacted on than passed.

LOUIS Stark, in *The New York Times*, noted that Congress is in revolt against what it calls "government by directive" and added:

> Since the President did not send any specific proposals for legislation with his message, it is apparent that he does not expect early action. At any rate, in withholding such specific legislative suggestions, he has placed the responsibility for the handling of social security and postwar problems squarely in the lap of Congress. In this instance, at least, Congress cannot accuse him of "dictation. . . ."
>
> In a sense the two reports put Congress "on the spot." Its members are aware that their constituents will look to them for help in postwar planning. Every community has men in the armed forces and when these men return home after the war they will expect jobs. They will expect some lightening of the social security tax burden, or at least a change in the law which will permit them to catch up on their expectancy in old-age and survivors' insurance system.

Editorially, the *Times* commented that neither of the two programs sub-

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mitted in the report puts "first things first," and neither shows genuine evidence of careful thought. "One looks in vain for adequate recognition of the formidable practical difficulties they would encounter," the paper said, continuing:

> The board proposes, in addition to greatly extended and increased social insurance and social assistance payments, "government provision of work for all adults who are willing and able to work, if private enterprise is unable to provide employment." Such a program would involve government costs of undetermined dimensions. It would accelerate a trend toward socialism. It would rest on the assumption that if full employment were lacking it was necessarily the result of inherent shortcomings in private industry, rather than of governmental policies and controls that prevented private industry from functioning. Throughout both reports there runs a strong paternalistic note: Most of the country's citizens seem to be regarded as wards of the state unable of their own initiative to do anything whatever without "counseling and guidance" from Washington.

The *Times* said further that the second part of the main program also leans heavily on the socialistic side and presupposes continued and even increased government intervention and control at almost every point, with very little left to private industry and the initiative of private citizens. The *Times* continued:

> . . . Admittedly the government must have in mind some definite program for action on "armistice day." It must know what it is going to do about the enormous war orders on which manufacturers will be working. It must know what it is going to do about the men in the armed services: What provision it must make for demobilization; what provision it must make for the men when they are trying to find their places once more in private life. It should have a definite idea of the order in which it will release war-time controls.
>
> It is proper that some one in the government should be thinking about these problems now, even though we are confronted with more immediate problems. But the thinking should be specific; the plan should be definite; and it would probably help to keep it so if the initial plan were confined mainly to the first few months of peace. After victory is achieved we shall be in a posi-

tion to plan more realistically and in detail for the longer future.

THE plan "betrays no concern on the part of its architects over the sordid matter of its cost," said *The Wall Street Journal.* The paper continued:

> . . . There are in this country some persons gross-minded enough to think of that. The Beveridge plan includes an estimate of the financial burden it would entail in 1945 at £697,000,000, say $2,800,000,000. As the population of the United States is not less than two and one-half times that of the United Kingdom it may be surmised that an American plan of equal money benefits, if initiated now, would in 1945 cost somebody the paltry sum of $7,000,000,000.

The Knoxville (Tennessee) *Journal* caustically denounced the plan as one which will alter "beyond all recognition the pattern of U. S. life." It stated:

> It does what the simon pure New Dealers wanted to do for the decade before the war, but were never quite able to accomplish. It proposes to place not a segment of the population in the clutches of the government, as was the case with the WPA and other similar ventures, but to shackle every man, woman, and child firmly to Washington regardless of age, color, or prewar condition of regimentation. It contemplates the indefinite continuance of all the economic restraints made proper and necessary by war, so that the freedom of United States citizens, inextricably related to their economic independence, will be impossible to ever regain.

The paper charged that the recommendations all have one goal in common, "complete power backed up by the public purse, in all cases stemmed from Washington." The paper made these additional observations:

> . . . This being so, the new proposals would make certain the same vicious principle in government that characterized WPA in its latter, and more political, stages. That is, every United States citizen would be invited to support, politically, the kind of government which would offer him, directly, the most in "benefits." Instead of placing part of the population in the position of competing in a national "grab bag," the NRPB plan would thrust all citizens in the same group.
>
> Perhaps the most spectacular blow at the country's traditional way of life is the proposal that the government become a "partner" in whatever business enterprise or industries the powers that be in Washington might be moved to select. Anybody with a quarter's worth of sense knows that, once such Fascist proposals as this are adopted, it will be only a matter of time until all business will be nationalized. In effect, we will "progress" from the Fascist state to the Communistic. At all times, however, we should be under as complete a dictatorship as are either of the two countries which spawned these two alien ideologies.

The Knoxville Journal expressed the earnest hope that Congress will "treat these recommendations as they deserve to be treated at the present time—that it will shelve them for the duration." Commenting further:

> . . . Before we undertake any more social reforms, any more plans for the banishment of fear from the cradle to the grave by Federal intervention, we have a war to win. None of us, including the Congress, has the slightest notion of the shape we shall be in, as a nation, when that first, prime goal is achieved.

CONGRESS is jealous of the prerogatives of suggestion, in its present mood, said *The Atlanta* (Georgia) *Constitution.* Continuing, it said:

> . . . Outside of such things that deal directly with the war program, the congressional attitude seems to be that nothing calls for serious consideration that does not originate from its own membership.
>
> Possibly the postwar plans drawn up by the National Planning Board are too impossible for consideration. They certainly go far beyond anything this nation has previously envisaged as legitimate social security and reasonable governmental control of business in time of peace.

The Columbia (South Carolina) *Record* saw in the plan another source of difficulties between the President and his followers and the conservative Democrats and strong Republican minority in Congress.

The paper observed that

> The President undoubtedly must have known this, a fact which makes his stroke at this time all the bolder. He has thrown himself more open than ever for assaults which undoubtedly will embody the general charge of promoting "socialism." There will also be the charge that this is not the time to raise this matter, so fundamental and so highly inflammable, and run the risk of interrupting concentration on the war effort. To which many would reply that we have talent enough to consider the postwar period

even while we are conducting the war.

Here again is raised the whole question of the administration's social and labor programs. The fight against them will go on. Recently it has been more vigorous. And as recently as last autumn there was the demonstration at the polls in which many supporters of the President in Congress were defeated.

From the *Nebraska State Journal* came the prediction that it is a "fair case" that the report will never be adopted or followed as a whole, adding:

> It would seem that the emergency of a war ending is to be employed to enlarge, emphasize, and put into national practice some New Deal schemes that have found little favor in actual tests.
>
> One reaction of Washington was that too little attention was paid in the report to a revival of private industry that would employ millions, and overemphasis given to expansion of what some term "social gains" at government expense.

THE *Columbus* (Ohio) *Evening Dispatch* saw in the general reaction to the report that the nation at war would not have to ponder over its recommendations for some time to come. It took particular note of that portion of the report which had to do with government's relation with industry, and said:

> However, the report will be considered some time, and will either be accepted or rejected in whole or in part. For this reason, one of its recommendations is so clearly revolutionary—and this is notable in a document full of proposals which are, to say the least, out of line with past American policy—that the people it would affect, if accepted, ought to be thinking about it. Here it is:
>
> > Where a state refuses to comply with the Federal requirements in accordance with the Federal law or refrains from participation in the program, the Federal government should have the power to operate the program within that state with Federal personnel until the state demonstrates its ability and willingness to reassume its responsibilities.
>
> Here, in one neat, concise paragraph is the dynamite that could blast to bits the system of government under which the United States has operated for more than one hundred and fifty years—a union of sovereign states, whose powers are defined by the tenth article of the Bill of Rights as follows:
>
> > The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.
>
> This recommendation means that, in the opinion of the men who wrote it and probably in the opinion of President Roosevelt whose uncle led their deliberations, we should have a fully centralized Federal government with the states shorn of their powers.

The Hartford (Connecticut) *Courant* said "precious little would be left of private initiative and free enterprise should Congress adopt the proposal of the National Resources Planning Board." The paper said the "government would have a hand in pretty nearly everything, and it's as true today as when Dana said it in his *Sun*, 'The hand of government is the hand of death.' " The paper continued:

> Under the lure of taking care of everybody from the cradle to the grave, guaranteeing a private or public job for every able-bodied person throughout his productive years, creating higher levels of income, especially for the lower-income groups, and surrounding old age with all the comforts of life, it is proposed to form a series of joint private and governmental partnerships, particularly with respect to those larger industries now engaged in war work. Under this partnership the government would select the areas and the business units that are to operate these industries. Furthermore, this type of joint private and governmental enterprise would concern itself with urban developments, housing, transport, terminal reorganization, air transport, communications, and electric power.

The "inevitable consequences of such a program," the paper concludes, "is government ownership on a wide scale. Private industry would have little chance with the government as its partner."

—C. A. E.

¶ "WE *have built new facilities duplicating others across the street in the hope of saving time, money, and improving efficiency, but we have lost all three of these.*"

—ROBERT W. JOHNSON,
Chairman, Smaller War Plants Corporation.

Communications Chief Reviews Effect of Telephone Limitation Orders

WPB's communications division has followed a policy of gradually increasing restrictions and at the same time creating the least disturbance to American telephone service, in the face of mounting problems growing out of the economy of scarcity confronting the nation.

So declared Leighton H. Peebles, director of the division, in addressing Bell Company and independent telephone company representatives at association meetings in Dallas, Texas, and Wichita, Kansas, on March 23rd and 25th, respectively.

Mr. Peebles reviewed for the two telephone associations the work of the communications division, now in its second year of operation, and told step by step the development of its program, including the latest revisions of L-50, which now is U-21, and of P-130, which now is U-3.

The director justified the restrictions being placed upon the telephone industry by pointing out that the volume of war production has increased four and one-half times since the start of the war. The normal relation of supply to demand has been reversed, he said, with the demand for war materials and consumer goods unlimited and the supply definitely limited by materials, labor, and facilities.

HE praised all industry for its rapid shift from peace to war production and paid particular tribute to the help the communications division of WPB has received from the telephone industry in framing plans for its own control and in coöperating to reduce use of critical materials, in the face of increased demand for service.

"Should demands for telephone instruments and other facilities increase," he said, "it may be necessary that we look deeper into the barrel of existing facilities and find means of recapturing some equipment as may now be considered as devoted to nonessential use. We have not yet attempted to recapture telephone instruments, their connecting lines, and central station equipment, but this may be in the offing if the present tight situation is aggravated."

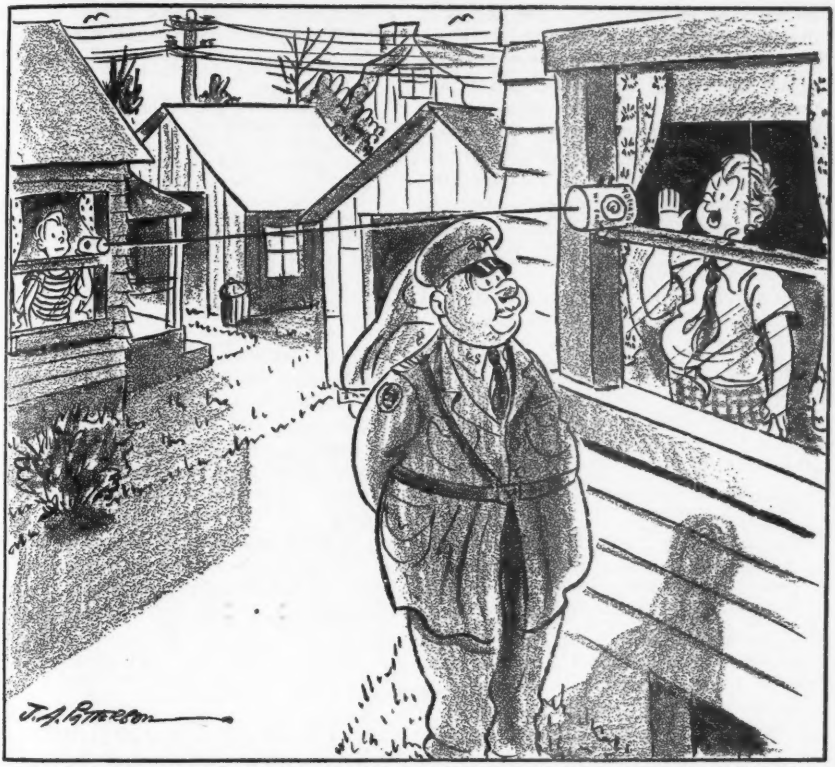
Commenting upon what the year of restrictions has meant in terms of service and savings of critical materials, Mr. Peebles said:

> In 1941, the industry used between 90,000 and 100,000 tons of copper. L-50 became effective in March, 1942. The use of copper in 1942 was about 35,000 tons. Since March, 1942, L-50 has been tightened several times, and at present the estimates of essential requirements for the year 1943 are from 10,000 to 12,000 tons. At the time of my talk to the Minnesota convention at the end of January, our estimates for 1943 were 12,000 to 15,000 tons. In this short period of two months, the industry has refined its estimates and reduced the quantity by 2,000 to 3,000 tons. It is this kind of coöperation that is making more material available for direct war uses.
>
> The effect of restrictions on service can best be illustrated by statistics of the Bell companies. As of February 1, 1943, the Bell companies have denied main service to about 200,000 applicants; denied upgrades and extensions to some 225,000 applicants; held orders awaiting facilities for main services totaling 100,000.

Mr. Peebles noted that despite much-reduced consumption of metals, the operating companies experienced a large growth in station gain in 1942, with the January and February, 1943, rate greater than ever in the industry's experience.

He said this demand is a matter of much concern to the WPB. A committee appointed to investigate the underlying reasons for the unusually large gain reported on March 6th as follows:

1. Continued requirements of war industries and the United States government.
2. Further employment and high payrolls, with decreasing supplies of consumers' goods available for purchase, and the movement of workers to new areas producing war orders.
3. The restriction on public and private transportation, making the tele-



"THE SIGNAL CORPS WANTS TO INVESTIGATE OUR TELEPHONE SYSTEM FOR 'FIELD OPERATION' POSSIBILITIES"

phone more of a necessity as a substitute for travel.

4. The declining rate of disconnections of service due probably to (2) and (3) and to the fear that new telephone service may not be available if present service is given up.

RECALLING that Order L-204, issued in November, 1942, stopped manufacture of telephone instruments when a survey showed there were 3,000,000 instruments of all types available, estimated to last through 1943 and into 1944, Mr. Peebles continued:

> Because of the telephone station gain, this inventory is now down by some 1,000,000 phones. These were used to meet the expansion of over 100,000 telephones per month and to replace instruments which were either destroyed by fire, permanently damaged in other ways, or disappeared for unknown causes. This inventory has also been drawn upon to take care of certain foreign shipments.
>
> If this rate of growth continues, the War Production Board faces the problem of supplying materials to manufacture telephones.

He gave figures on the amount of various critical metals needed for the manufacture of telephones and said that if the present growth continues a serious situation will result. "It is up to you to render service only where it is essential to the war effort for health, welfare, and security," he emphasized.

THE director reviewed the difficulties encountered by the manufacturing

industry as an explanation for delays in delivery of essential equipment.

"In 1939," he said, "a representative group of leading communication equipment manufacturers did a total volume of business of approximately $145,000,000, most of which was for civilian use. These same manufacturers are now operating at an annual rate of about one billion dollars, based on shipments made during December, 1942, most of which is training or combat material." He added the figures did not include the output of companies whose principal product prior to the war was in the radio and wireless field.

Mr. Peebles said one of the many ways in which the industry can aid the war effort is through limitation of inventories to a working minimum. He said:

> Under the Controlled Materials Plan, all users of wire and cable are restricted to 60-day inventories of these items. When Order P-130 is revised, it will conform to this limitation on operating companies' inventories of these materials. The order, however, will provide for the segregation of special stocks of wire and cable reserved to repair damage due to storms, floods, enemy action, etc. Also there will be excluded from the general inventory all equipment which is ordered for sale within OPA ceiling prices and which is specifically listed on forms which will be provided by the communications division.
>
> It is expected that the amended order will provide a rating of AA-1 in lieu of the present AA-5 rating. The AA-1 applies to the noncontrolled materials only. An operator who wishes to obtain wire, cable, or strand for maintenance, repair, and as operating supplies will make use of the CMP allotment symbol "MRO," and will sign the certificate as given in the amended order. Usage of materials on maintenance, repair, and operating supplies is limited to the amount used in 1942.

MR. Peebles told the telephone company representatives that competent engineers participate in decisions on applications and urged that to avoid rejections of worthwhile projects it is essential that applicants state in complete detail the reasons for the necessity of the work.

A mere statement that a project is necessary is not sufficient, he declared.

"You must indicate specifically and demonstrate specifically *why* it is necessary."

—C. A. E.

Report to the Council of Electric Operating Companies

AT its recent meeting in Chicago, the Council of Electric Operating Companies heard an encouraging report from its president, Tom P. Walker, who is also in charge of the council's headquarters in Washington, D. C. The meeting witnessed the first birthday of the council, which was organized to facilitate coöperation between Federal government agencies and the operating electric utilities with respect to emergency matters.

Mr. Walker pointed to the recent assertion by J. A. Krug, Director of the Office of War Utilities, that "power men —public and private—should be proud of the job that has been done in providing power supply." Mr. Walker commented:

> . . . This confident statement from unquestionable authority, made fifteen months after war was declared and three years after America became the arsenal of democracy, does make us, who represent about 85 per cent of the nation's central station power supply, very proud indeed. We appreciate the pat on the back. We find ourselves now even more determined to continue the fine job under the leadership of one whose abilities and character we all respect. . . .
>
> All of us regret that the nation does not realize what a good job the power industry, especially our part of it, has done for the war. . . . The industry's national advertising program is a good start. It should be supplemented by more of the spot newsworthy material which is being generated constantly during our day-to-day operations. We cannot argue that the telling of our accomplishments to the world will further the war effort directly, but there can be no question about its effect on the morale of several hundred thousand operating employees whose self-respect and enthusiasm will be greatly en-

hanced if their neighbors and friends knew of the outstanding contributions we, as an industry, are making.

ALONG this line the council has issued an interesting and well-illustrated booklet entitled "To Help Speed Victory," which reviews in plain and brief style the war work of the electric power industry and includes a list of committeemen elected at the Chicago meeting of the Council of Electric Operating Companies. Mr. Walker stressed the point that the council has adhered rigidly to its program of service to the war effort rather than direct service to the industry. He said "there have been temptations and some importunings to try our hand at some of the other problems that plague us," but so far the council has continued along its preordained course. He stated:

> Every project your committee has been asked to consider has been examined carefully for possible controversy, and in each decision it has resolved any doubt in favor of doing nothing rather than to jeopardize the council's position. I can report a growing appreciation for this policy among those with whom we deal. Definitely we are winning respect and confidence which in the long run will return us large dividends. I am now more firmly convinced than ever that we have chosen the most effective means possible to make our contribution to the winning of the war and then later to win for ourselves a better position in the nation's economy. Our record as an industry is abundant testimony as to the first statement. Time will see the second come to pass.

The council, which presently represents 315 operating companies, each serving more than 4,000 meters, does not issue periodic letter reports. It depends primarily on the Edison Electric Institute information service, the technical press, and other media to disseminate information of passing developments. It supplements these with occasional "notes" and periodic "area meetings" at which members gather for informal grass-roots discussion of all war problems.

Speaking of future problems, Mr. Walker said:

> . . . Now is no time to relax even for an instant our effort to win this war. But the war will end some day—all past wars have—and then will come new problems—new opportunities. Somehow, somewhere, we must find moments to give them a thought. Our postwar fortunes do not depend only on the new appliances manufacturers will supply for us or the ability of war industries to convert to peace-time pursuits. Nor do they depend entirely on commission rulings or political happenings. More than all these, our future depends on us, on our own willingness and ability to do our jobs well under new conditions and circumstances. The rugged qualities which made us great during war time may now make us great when peace comes. We have an opportunity which may never come again.

IN the final analysis, the speaker added, the success of the electric industry lies in the hands of its customer—the average citizen. In the past the average citizen has been somewhat critical of the industry and the impact of such criticism has been felt more keenly because of the concentrated character of the industry's organization. The electric industry must be prepared to meet the competitive test for future business. The customer will insist on the best product at the least cost, just as he requires from the butcher and the baker. He will shop around with those who promise a better bargain, but he will insist on quality and hammer down price. He may be fooled by cheap merchandise and it is up to the industry not only to meet the demand of the market, but to sell its product in such a way that the customer will make an intelligent choice. Failure in either of these responsibilities may well mean that "someone else will take over their job."

Mr. Walker suggested that the first step in such a program is to insure friendliness and satisfaction in every possible contact with the customer—the inevitable human equation. Again, the industry must study its own market to arrive at a proper balance between service and price. The industry should seize the opportunity inherent in the high quality of its executive leadership to take its share of the responsibility for community planning and other planning of the future.

—F. X. W.

The March of Events

WPB Reorganized

REORGANIZATION of the War Production Board has been ordered by its chairman, Donald M. Nelson, through a directive signed by Mr. Nelson on March 19th.

Charles E. Wilson, executive vice chairman, and the following vice chairmen emerge as key figures in the new organization: J. A. Krug, who is named program vice chairman; Donald Davis, operations vice chairman; Ralph Cordiner, vice chairman working directly under Mr. Wilson; and W. L. Batt, vice chairman dealing particularly with international supply.

In addition, the post of "administrative assistant to the chairman" was created, and Lieutenant Colonel E. R. Jaffee, former vice president of the Consolidated Edison Company, was named to the post.

A considerable reshuffling of responsibilities and functions of various individuals and agencies within the WPB was provided for under the new order.

Under the new set-up, Mr. Nelson has only six original units which report directly to himself.

These are the Office of the Executive Secretary, Office of the General Counsel, Office of the Rubber Director, Office of War Utilities, the Smaller War Plants Corporation, and the Smaller War Plants Division.

Asks End of Freight System

THE Tennessee Valley Authority on March 25th recommended to Congress abolition of the 5-region system of freight rates and creation of one nation-wide system to help the South and the West achieve greater industrial development.

The TVA report, four years in the making, was sent to Congress by President Roosevelt with a brief, formal message of transmittal.

It described the present regionalized system of freight rates as a "barrier to national productiveness," and said standardization was necessary if the South and West were to achieve "greater industrial development to absorb the surplus population that is normally uneconomically employed in producing raw materials, including agricultural staples such as grain and cotton."

David E. Lilienthal, TVA chairman, in a letter to Mr. Roosevelt, inferentially admitted the difficulty of accomplishing his recommendations during the war.

"Street Car" Derby

COMPLETING its plans for limiting attendance at the Kentucky Derby on May 1st to residents of Louisville, the Office of Defense Transportation on March 23rd announced that the railroads, the Churchill Downs race track, and the bus companies were coöperating with ODT efforts. The railroads have agreed to restrict reservations to Louisville immediately before and after the race and the track management is limiting sales to residents of the city.

Among the "drastic" steps by which travel to the nationally famous race is being curbed as a matter of war-time necessity, according to ODT Director Joseph B. Eastman, are:

At the request of ODT the railroads have agreed to make no reservations prior to April 26th for travel to Louisville between April 26th and May 1st, or for travel out of Louisville on May 1st, 2nd, or 3rd. Persons purchasing Pullman tickets to Louisville between April 26th and May 1st will be unable to make advance return reservations for May 1st, 2nd, or 3rd.

These restrictions do not apply to members of the armed forces, holders of government transportation requests, or other bona fide war-connected travelers.

Eastman is sending a letter to the out-of-state Derby boxholders and Kentucky boxholders outside the Louisville area, notifying them of the reasons why ODT has requested the carriers to take steps to limit travel and requesting the coöperation of the boxholders in ODT's efforts to eliminate travel to the Derby. A copy of the letter was being sent by the Churchill Downs management to the Louisville boxholders, many of whom customarily invite out-of-state guests.

The motor bus carriers have agreed, at the request of ODT, not to furnish additional service to Louisville at the Derby week-end, over normal week-end requirements.

Amendment Announced

ELECTRIC service is brought within reach of smaller farms under an amendment to Utilities Order U-1-c announced on March 25th by the Office of War Utilities. The action is designed to increase food production on such farms by making it possible to operate farm machinery with electricity, saving man power and increasing production.

Previously a minimum of 10 "animal units"

was required to make a farm eligible for electric service. An "animal unit" is a measure of a farm's productive capacity. Under the amended order the minimum is cut to 5 animal units. An extension of up to 100 feet is permitted for each animal unit, if all other conditions of the order are satisfied.

The Office of War Utilities also released to utilities the material in electric lines not now in service, to be used in building the short extensions permitted by U-1-c. This move was made in an effort to put into war service these scattered quantities of useful material heretofore idle, relieving the drain on wire manufacturing facilities and raw materials.

FPC Denies Petition

THE Federal Power Commission on March 22nd announced its order denying a petition by the California Oregon Power Company, with principal offices in Medford, Oregon, for a rehearing in respect to the commission's Opinion No. 87 and order of February 3, 1943, which disposed of the amounts of $828,684.97 and $3,987,037.43 representing excess cost of acquisitions over original cost and write-ups established in the process of reclassifying the company's accounts and determining the original cost of its electric plant.

The order of denial stated that the company's assignments of error in its petition for rehearing "do not raise any questions of fact or of law which have not been previously raised by the California Oregon Power Company and previously considered by the commission."

New Power Pool

PLANS for the creation of a power pool in the northern Illinois-Wisconsin region as an aid to war production in that highly industrialized area have been completed and an interconnection between two of the country's big power systems would be undertaken in the immediate future, it was learned recently.

Under the arrangement, which has received the sanction of the Federal Power Commission and the Illinois Commerce Commission, the huge Commonwealth Edison Company of Chicago system will join its facilities with those of the Wisconsin Electric Power Company by means of a 132,000-volt transmission line. The interconnection, which will pool the power reserves of both systems, is being made at the request of the War Production Board and will serve for the duration of the war as a "mutual reserve" in the event of an emergency arising from the heavy concentration of vital war loads being served in the area.

The linking together of Commonwealth Edison, which serves Chicago and surrounding northern Illinois territory, and Wisconsin Electric Power, serving Milwaukee and other important war centers in southern Wisconsin, will benefit materially war production in the territory, since a large increase in the demand for electric power is expected this year from present war factories and those scheduled for completion in the near future.

War contracts running into billions of dollars are being handled in the numerous defense plants located in the territories served by the two power systems, and before the end of this year important new steel, aluminum, and airplane factories are expected to be drawing heavily on available power resources.

Transportation Services "Frozen"

ALL vehicles carrying nine or more persons in local transportation service busses, street cars, trolley coaches, trucks converted for passenger use, and ferry boats on March 17th were "frozen" in their present service.

The Office of Defense Transportation said the order was designed to protect war workers and school children by preventing the transfer of vehicles from communities where they are needed.

All Federal agencies, including the Army and Navy, are required to file reports on their transportation - carrying equipment. These agencies are forbidden to buy, lease, or requisition such equipment without ODT approval.

An immediate effect of the action, ODT said, would be to stop a "black market" in school busses. School officials asked for the "freeze," reporting that many contract operators already had shifted their busses to other uses.

The order permits an operator to take on additional service, such as using a school bus to transport war workers, so long as he does not discontinue the school service.

Regular transportation companies may shift equipment from one route to another, but cannot shift it to serve routes of another company.

Hydroelectric Plant for Russia

A MESSAGE from Tashkent announced recently that ground had been broken at Farkhad Gorge for a hydroelectric irrigation project on the Syr-Darya river destined to have the second largest power output in Russia.

One hundred thousand persons will be needed for some phases of the job, which plans to raise the river's level 80 feet and lead the waters through a diversion of the channel at the rate of 550 cubic meters per second, almost equal to that of the Shannon station in Ireland, the biggest in Europe.

Bonneville Funds Proposed

APPROPRIATION of $500,000 for completion of work on Bonneville dam this year was recommended by Army Engineers during hear-

ings by the House Appropriations Committee last month on the War Department civil functions bill. The committee took no action on the bill.

The extra money is needed, engineers testified, because the urgent demands for power necessitated a speed-up in the building program, which increased costs above the current $4,166,000 appropriation.

Major General Eugene Reybold, chief of the Army Engineers, told the committee that some difficulty had been experienced in getting materials and labor, which caused some delay.

Arkansas

Refunds Planned

IN an order described as an innovation in the field of public utility rate regulation, the state utilities commission on March 25th established as its war-time policy a program of ordering annual consumer refunds of excess earnings by the state's private utilities.

Although members of the commission declined to discuss that angle, the action was regarded as affording the utilities a means of building consumer good will and reducing the amount of excess profits taxes to be paid to the Federal government.

California

Trolley Purchase

EXPANSION of the San Francisco Citizens Committee seeking passage of the Market Street Railway purchase bonds to a membership of 1,000 men and women representing all districts, groups, and interests, was announced last month. The committee was created by Mayor Rossi and will undertake the task of getting a favorable vote on $7,950,000 in bonds to buy the private line.

A special election for the purchase has been set for April 20th.

In an invitation to prospective members of the committee, Mayor Rossi said:

"We want a cross-section of citizens of San Francisco represented, lending their names and their energy to a public-spirited campaign, the success of which is deemed imperative if our city is to continue its progress.

"The opportunity to purchase the operative properties of the Market Street Railway for $7,950,000 offers a sound financial investment and assures fast, frequent, and comprehensive street car and bus transportation during these serious war times . . ."

Colorado

Senate Votes Lobby Probe

THE state senate recently authorized a sweeping investigation of lobbying in connection with the Colorado Power Authority bill and then refused to remove from the table the house resolution calling for a joint interim committee to explore all phases of the power authority proposal.

By these two actions, the senate made plain that the power authority bill, under which the state would have been authorized to buy the Public Service Company of Colorado and other electric and gas utilities, is dead so far as it is concerned.

There was a possibility that the house would decide to set up its own interim committee to study the power authority proposal.

The legislation calling for a senate investigation of lobbying and other activities in connection with the power authority bill was adopted by a vote of 16 to 13.

Georgia

Tax Bill Vetoed

A BILL passed by the recently adjourned state legislature requiring the state to tax Federal and state enterprises which compete with private industry has been vetoed by Governor Arnall. This bill was attacked in the state senate as discouraging development of power plant and rural electrification in Georgia.

It was charged that the bill was sponsored by the Georgia Power Company to discourage the Tennessee Valley Authority from extending lines into north Georgia, and also to prevent the proposed Federal water power de-

velopment on the Savannah river north of Augusta.

When the bill came up in the senate, Senator David Arnold said the bill represented "a protest to Washington against Federal encroachment on private business." He asserted that "under the present trend in government it will not be ten years before private incentive is eliminated and a dictatorship or Communism is brought about in this country."

The bill was first offered in the house by Representative T. Guy Connell of Valdosta, and was passed unanimously. House Speaker Roy V. Harris, taking the floor in support of the measure, warned that encroachment of Federal agencies into various fields, especially public utilities, would so deplete state, county, and city revenues that "we will have to go to Washington with our hats in our hands, dependent on Federal bureaucracies."

Illinois

Win Pay Boost

A PAY increase of 9 cents an hour was recently granted by the War Labor Board in Washington for all of the 14,000 motormen and conductors employed by the Chicago Surface lines, officials of the Street Car Men's Union has announced.

Notices of the wage hike approval were signed by Daniel J. McNamara, recording secretary of the union, and posted on the bulletin boards of all street car barns in the city.

WLB Chairman William H. Davis said that the increase was granted under the recommendation of the board which arbitrated the case in Chicago.

Seven cents of the increase brings the street car men up to the so-called cost of living formula enunciated by the WLB in the "Little Steel" case.

The remaining 2 cents was being granted, Davis said, to "protect the Chicago street car men's wages as compared with wages in other cities."

Indiana

Merger Petition Heard

TESTIMONY of more than a half-dozen witnesses was on record last month with the state public service commission, awaiting action of a 2-member hearing commission on a petition for approval of the sale of the Indiana Gas Utilities Company's Terre Haute distribution system to the Terre Haute Gas Company.

The sale, involving a price of $1,250,000, was approved December 31, 1940, by a former commission but that body's action was set aside by the Clay County Circuit Court in a decision later upheld by the Indiana Supreme Court. The action was held void because the order was signed by only two members of the commission, the third claiming it was issued without his knowledge.

The company presented testimony at the hearing that gas consumers of Terre Haute had benefited by reduced rates to the extent of $57,000. It also was pointed out that small consumers of the company had received gas at rates as low or lower than those in towns served by natural gas.

Iowa

Utility Purchase Question

THE long discussion of possible city purchase of the gas and light utilities in Des Moines has brought these new developments:

1. Gregory Brunk, chairman of a committee investigating the city purchase proposal, has asserted before the city council that the recent sale of the utilities is "shadow-boxing" and will not be approved by the Securities and Exchange Commission. (The sale is not effective until so approved.)

2. The Federal Power Commission has informed the council that it has no experts available to make an appraisal of the utilities.

3. The councilmen are considering getting such FPC information as they can.

Brunk told the council that sale of the Des Moines Electric Light Company and the Iowa Power & Light Company to the United Light & Power Company, Chicago, Illinois, means creation of a bigger Iowa utility system than the present one.

City Solicitor Fred T. Van Liew told the council that the FPC had written, in reply to a request two months previous, that in normal times the commission can make its experts available, "subject to reimbursement." The FPC regretted, however, that it "does not at this time have sufficient staff available for

such work as requested, due to the general shortage of man power, losses of personnel to the armed forces, and the large burden of the war activity of the commission."

Leon M. Fuquay, FPC secretary, said the commission would give "pertinent data and information to the city, and city representatives may confer with the staff." Mayor John MacVicar said the city councilmen would discuss the possibility of getting this data from the FPC.

Brunk urged the council to hire an engineering firm to help. He said that the FPC can furnish all the data the city needs to get the value of the utilities and the city "would not need to spend 10 cents for an appraisal."

Kansas

Allotment Approved

PRESIDENTIAL approval of an allotment of $153,000 to the board of public utilities, Kansas City, to finance the construction of a transmission power line and substation was announced on March 29th by Major General Philip B. Fleming, Federal Works Administrator.

The board of public utilities and the Kansas City Light & Power Company supply electric service to war industries, military establishments, and essential civilian operations in and near Kansas City, Missouri, and Kansas City, Kansas.

The Federal Works Agency has been advised that neither the private company nor the public plant has adequate generating capacity to serve existing or anticipated power requirements in the area in event of failure of its major generating units. The allotment is to provide an uninterrupted power supply through an interconnection between the public and private plants.

The exact terms of the financing would be arranged with the utilities.

Kentucky

Rates Ordered Reduced

THE state public service commission on March 18th announced that, following its study of advance statements of operating revenues, expenses, and income of the Kentucky Utilities Company for the calendar year 1942, it had directed the company to reduce its rates and charges for electric service supplied by it to the extent of $500,000 per year, such reduced rates to become effective on bills mailed on and after April 1, 1943.

This reduction in rates, which has been accepted by the company, brings to $1,300,000 per year the savings to electric users of the Kentucky Utilities Company which have been effectuated in the past four years and to $2,250,000 the annual savings brought through rate reductions during the past eight years, it was reported.

It was also announced that the company for the duration would eliminate its penalty for failure upon the part of the customer to pay his bill within the stated discount period.

Maryland

ODT Authority Challenged

A SPOKESMAN for the state public service commission recently questioned the authority of the Office of Defense Transportation to continue the ban on nonessential taxicab riding within cities after the restrictions on pleasure driving were lifted by the ODT on March 22nd.

The commission spokesman pointed out that the restrictions on the pleasure use of taxicabs were ordered by the state commission after the ODT had issued its no-pleasure-driving order. The ODT, he said, had nothing to do with it.

It was made plain, however, that the commission order of last June, prohibiting the use of taxicabs for pleasure trips outside the city or for any trips beyond a 3½-mile limit, still stands. The only exceptions to the limit are essential trips to war plants.

Transit Tax Urged

RESTORATION of a 9 per cent tax on gross receipts of the Baltimore Transit Company for public parks maintenance would be one of the first things former Representative John A. Meyer would work for, if elected mayor, he said recently.

Mr. Meyer, one of four candidates for the Democratic mayoralty nomination, pointed out that the United Railways, predecessor to the Baltimore Transit Company, was relieved of the tax in 1933 when the United was in receivership.

Michigan

Utility Strike Canceled

A STRIKE averted, the Consumers Power Company last month continued feeding electricity and gas to a vast southern Michigan area whose industries shoulder much of the war effort.

The walkout by the CIO's Utility Workers' Organizing Committee, set for midnight March 19th, was called off at the behest of the regional War Labor Board, and community life, including the war manufacture, remained undisturbed.

Representatives of the union, which has been disputing with the company over application of a contractual dues check-off, on March 19th accepted a WLB directive after some nineteen hours of private conferences had failed to achieve a settlement.

Officers of the Army and Navy participated.

The War Labor Board directed that there be no interruption in company operations and instructed the union and company to name an arbitrator whose decision on the dispute shall be final.

Wendell L. Willkie declined to arbitrate the labor dispute involving the Consumers Power Company, a Commonwealth & Southern subsidiary of which he was formerly the head. Mr. Willkie said he was "deeply touched by the expression of confidence in me both by the employees and the management," and recalled his former chairmanship of the board of Consumers Power and the negotiation of its first collective bargaining agreement. He added that he knew personally hundreds of the company's employees.

The Utility Workers' Organizing Committee had suggested Mr. Willkie as arbitrator of the dispute. Company officials said he would be acceptable to them and the regional War Labor Board urged Mr. Willkie to accept the position as "a very important wartime service."

Missouri

Laclede Reorganization Approved

THE reorganization plan of the Laclede Gas Light Company of St. Louis and the sale of the property of its affiliated company, Laclede Power & Light Company, to Union Electric of Missouri were approved recently by the state public service commission, subject to conditions imposed by the state commission.

The Laclede Power & Light plant sale, at a price of approximately $10,000,000, which will give Union Electric a monopoly on electric service in the St. Louis area, is subject to acceptance of the Laclede Gas reorganization plan as approved.

The sale, a major element in the reorganization plan, also is subject to a limitation that the present lower rates for Laclede Power & Light customers shall be continued in effect by Union Electric for such customers, unless and until the rates may be changed by the commission after a hearing.

The Laclede Gas reorganization plan, which reduces the company's capital structure from $48,033,000 to $34,418,150, and which reduces its fixed charges about $1,000,000 a year, must be approved by the Securities and Exchange Commission before it may become effective.

While not a part of the reorganization plan, the state commission, in its report and order, expressed an opinion many benefits would result for the public through future acquisition by Laclede Gas Light Company of property of the St. Louis County Gas Company, an affiliate of Union Electric.

New York

Board Reports Savings

THE state transit commission last month made public its annual report, which declared that the commission has saved subway riders and commuters almost $1,000,000,000 in higher fares since its creation in 1921.

"The transit commission," the report said, "was primarily responsible for preserving the 5-cent fare in the city of New York and for preventing increases in the commutation rates. The savings that thus accrued to the riders over the ensuing years, conservatively estimated, would approach the surprisingly huge sum of $1,000,000,000."

Governor Thomas E. Dewey on March 28th announced he had signed the bill for abolition of the transit commission and transfer of its functions to the state public service commission, effecting a saving of $104,000 annually to New York city and $71,000 to the state.

In its report the commission listed the consummation of transit unification in 1940 and the grade-crossing program as two of its outstanding achievements.

The report showed that in the fiscal year

ended June 30, 1942, the rapid transit lines carried a total of 1,870,414,849 fare-paying passengers, which was an increase of 32,671,719 over the number carried in the fiscal year ended June 30, 1941. In the fiscal year ended June 30, 1942, bus lines, including those in Nassau county, carried 799,231,400, an increase of 107,056,162.

Gas Rates Approved

IN a unanimous decision announced on March 22nd, the state public service commission found that gas rates charged by the New York & Richmond Gas Company for service to consumers in Staten Island were not unduly high and dropped a proceeding to have the rates reduced.

Although company revenues increased from $1,186,216 in 1938 to $1,252,566 in 1941, operating expenses and other charges increased from $865,106 to $986,102 in the same period, the report said. It was also reported that operating costs, taxes, and other charges were still higher in 1942 than they were in 1941.

Taking all elements into consideration, the commission found that the company's return on a rate base of $3,796,000 for 1941 would be $199,309, or about 5.25 per cent.

Utility Bill

THE state assembly last month passed and sent to the senate the Mitchell bill which would require public utility companies having optional rates for different kinds of service to notify the customer once a year which type of service would have cost him the least.

Ohio

Transport Tie-up Nipped

A THREATENED strike which would cripple an already overloaded transportation system in Akron was averted recently when the regional War Labor Board summoned CIO and AFL union leaders to Cleveland in an effort to solve a jurisdictional fight.

The board also issued a directive ordering that there be "no interruption of the service or operation of the Akron transportation system, upon which Akron's war production depends."

With leaders of the Akron Transport Workers' Union (CIO) and the International Association of Machinists (AFL) refusing to give ground in the interunion fight, the Akron Transportation Company, now burdened with woes in trying to meet demands of additional thousands of riders in Akron to work in war factories, was "caught in the middle," Paul Fuller, resident United States conciliation commissioner, said.

Utility Measure Rejected

THE Kane bill, which would supplant present methods of using reproduction cost new of utility property in fixing utility rates, was indefinitely postponed by the state senate utilities committee last month.

The measure, which was drafted through the coöperation of John Ellis, Cincinnati city solicitor, and John L. Davies, Columbus law director, was consigned to the scrap heap by a vote of 4 to 2.

According to proponents, the bill, which would set up a plan whereby the cost of the particular utility property would be taken as of the date it was placed into service, and merely require adjustments for depreciation, would save both consumers and the utilities hundreds of thousands of dollars through the elimination of repeated engineering surveys and the offering of expert testimony on the property valuations "as of the date certain."

An attempt was made early in the hearing to kill the bill, but the committee deferred action to permit George McConnaughey, chairman of the state utilities commission, to present the commission's suggestions which would have radically altered the measure.

Senator Larry Kane, Republican, sponsor of the bill, refused to accept commission suggestions which would throw the door wide open for the commission to use virtually its own discretion in arriving at property valuations.

The demise of the bill marked the second utility victory of the day against antiutility legislation. During the senate taxation committee hearing, the committee reaffirmed its stand on the Hoffman bill by voting 70 to 5 to retain the December 31, 1944, termination for the extender of the .65 of 1 per cent utility excise tax upon gross receipts. As approved by the house, the termination date would be April 30, 1945, thus affording ample opportunity for the next general assembly to reënact the law for another two years.

Protest CEI Sale

AVON Lake village, which will be threatened with municipal bankruptcy if the city of Cleveland purchases the huge Cleveland Electric Illuminating Company's power plant in the village and it becomes tax exempt, recently took action protesting sale of the utility.

Should Cleveland buy the power plant, Lorain county would lose $11,134,280 from its present tax duplicate, County Auditor Frank Ayres said.

Heads of 30 Cuyahoga county municipalities have also voiced their opposition to the purchase.

FPC Postpones Hearing Date

THE Federal Power Commission recently announced its postponement until further order of the hearing previously scheduled to begin April 7, 1943, in Cleveland, pursuant to its inquiry instituted in February, 1939, for the purpose of determining whether the East Ohio Gas Company, with principal offices in Cleveland, is a natural gas company within the meaning of the Natural Gas Act and investigating the cost of natural gas service rendered by the company, including the cost of transportation of natural gas from the Ohio river to the city gates of Cleveland, Euclid, and Lakewood, Ohio.

Subsequent to the institution of the commission's investigation, these three cities filed separate complaints with the commission in June, 1942, asking that the commission order East Ohio to show cause why it should not ascertain and submit the original cost of its properties in compliance with various orders of the commission addressed generally to all natural gas companies subject to the commission's jurisdiction and stating that they have a substantial interest in the enforcement of the commission's orders and the determination of East Ohio Gas Company's original cost.

In an order dated March 9, 1943, the commission permitted the city of Cleveland to become an intervenor in the East Ohio proceeding, subject to the customary provision that such permission shall not be construed as recognition by the commission that Cleveland might be aggrieved by any order issued by the commission in the proceeding.

Tax Proposal Killed

THE state house taxation committee recently killed a bill to permit local taxation of publicly owned utilities after Mayor Frank Lausche of Cleveland and other municipal officials voiced a vigorous opposition.

The measure was deferred indefinitely by a vote of 12 to 6 and no one saw hope of its revival.

Mayor Lausche, urging its defeat, said cities had been given constitutional authority to operate public utilities and they should be allowed to do so as they saw fit. Municipally owned utilities, he added, should not be subsidized and should be required to charge sufficient rates to eliminate any necessity of calling on taxpayers to help run them.

Pennsylvania

FPC Allows Reduced Rates

THE Federal Power Commission on March 22nd announced its order allowing a schedule of reduced rates for electric energy and natural gas sold by the Rockland Light & Power Company, Nyack, New York, to its wholly owned affiliate, the Pike County Light & Power Company, Milford, Pennsylvania, to become effective as of January 1, 1943.

The order said the new rate schedules, which were filed by the Rockland Company after several conferences between representatives of the Federal Power Commission, the Pennsylvania Public Utility Commission, intervenor, and the Rockland Light & Power Company, will result in annual reductions in wholesale charges for electric energy of about $6,800 and of about $500 a year for natural gas, which may be passed on to Pike county's residential customers under an order of the Pennsylvania Public Utility Commission dated February 24th, terminating its rate proceedings against Pike County Light & Power Company and directing the filing of reduced residential rates.

South Carolina

TVA Purchase Proposed

A PLAN to permit the Tennessee Valley Authority to acquire the South Carolina Public Service Authority, operator of the $57,000,000 Santee-Cooper hydroelectric development, was proposed last month in the state general assembly.

Sale of the public utility to the Federal government would be authorized by a joint resolution introduced by Senator Charles E. Perry, Jr. The resolution would create a 6-man committee to negotiate with the Secretary of the Interior, the TVA, and other Federal departments "with the view of purchasing all the holdings of" the Santee-Cooper development near Charleston. The committee would be composed of three senate and three house members. The sale price was fixed at a "sum equal to or greater than the total amount of the bonded indebtedness . . . including all accrued interest."

The public service authority has received $57,025,000 from the Federal government, of which $26,055,000 was a loan. The authority has a proposal before the state legislature which would permit it to increase its value to $97,000,000 through purchase of two Columbia privately owned utilities.

Senator Perry pointed out that it appeared the principal objection to the Santee-Cooper expansion bill before the senate was that it

would be a "political octopus" and explained that his resolution would prevent this. The senator said he did not want to see Santee-Cooper under political control; therefore, he thought it best to have the Federal government operate the project.

Tennessee

TVA Files New Petition

ANOTHER move was made recently in the Tennessee Valley Authority's suit for breach of contract against Lenoir City with the filing of a petition in Federal court to place on the record testimony of W. N. Estes and R. L. Voss, Nashville security company officials.

TVA has claimed that a city ordinance increasing electric rates to provide for the payment of city bonds is illegal and void as it is an impairment of the contract between the authority and Lenoir City.

Texas

Investigation Proposed

AT a time when the Lower Colorado River Authority and the Guadalupe and Blanco River Authority are under investigation by a committee of the house, a proposal was recently made in the state senate to investigate the Brazos River Conservation and Reclamation District, an authority of the kind of the two already under investigation.

Washington

Verdict Declared Fair

THE security holders of the Puget Sound Power & Light Company "may conclude that they have received fair treatment at the hands of the Federal jury," which recently returned a verdict of $9,500,000 which the Snohomish Public Utility District must pay the power company for the latter's distribution properties in that county, Lowell P. Mickelwait, attorney for the power company, said.

"The jury's verdict of $9,500,000 was less than the total of $12,000,000 which we felt the company was entitled to," Mickelwait said, "and for that reason the company is not entirely satisfied with the verdict. However, the amount fixed by the jury was two or three times what the PUD witnesses testified the property was worth and not only assures the company of receiving the full market value of the property under condemnation but something for severance damage due to the tearing apart of this large integrated system."

The verdict is a sort of option, Mickelwait explained. If no appeal is made on either side, then the utility district has the right to decide whether to take the properties at this price. If the county decides against it, the verdict becomes ineffective.

If an appeal is made, proceedings are tied up until the appellate court makes a decision. Either party may move for a new trial, which United States District Judge John C. Bowen, in whose court the case was tried, may or may not grant.

The figure was about midway between the figures set by the PUD and the power company.

Power Petition Accepted

OPPONENTS of Initiative 12, the public power measure, have until midnight June 9th to obtain 30,000 legal signatures to referendum petitions to put the matter before the people in the 1944 general election.

Secretary of State Belle Reeves accepted the filing of such a petition on March 18th, after declining to accept it sometime ago on the advice of Attorney General Fred E. Lewis, who held the emergency clause contained in the measure made it immediately effective.

The initiative provides that county public utility districts may combine to acquire the properties of private utilities.

If opponents fail to obtain the necessary signatures, the initiative will take effect June 9th.

Further reflecting the action of the recent state legislative session was the signing by Governor Langlie of 40 bills, among them one amending the General Revenue Act. Some of the changes it effected are:

Exemption from the sales tax of transactions made with utility property to other utility concerns, whether by negotiated sale or condemnation. (This clause was said to particularly benefit public utility districts in acquiring private utility property.)

Reduction of utility tax rate to carriers of both persons and property in cities over 150,000 population.

The Latest Utility Rulings

FPC Determination of Cost of Power Project Modified by Federal Court

UPHOLDING, for the most part, the findings of the Federal Power Commission in 41 PUR(NS) 449, the United States Circuit Court of Appeals has made certain modifications of the commission's order. Items disallowed as cost of a power project, the court held, must be written out of the project account and of necessity dealt with in some other account. Commission power to require accounts to be kept according to its uniform system was sustained, but the court observed that accounting orders of the commission are not conclusive. It was said concerning a required charge to surplus:

> We do not think any property right has been taken without due process of law by the charge out. There may be, as is contended, some investment of permanent worth which legitimately increases the present value of Alabama's properties used and to be used for the public benefit on which a return is due in rates, but which is not part of the legitimate original cost of Martin dam under the license and the Federal act which it embodies. The commission's accounts do not at all affect the state rates. If in the future Federal rates are fixed it will be time enough to decide what effect the commission's accounting orders are to have. . . . It is otherwise as to the order fixing the legitimate original cost. . . . After judicial review here there is added the force of a judicial determination. The "net investment" in the project is ascertained at any given time from this original cost as a basis . . . and is important both in fixing rates under § 20, and in taking over a project under § 14. But the mere bookkeeping which the commission may order under § 301 we think is informational. . . . We do not adjudge that all that has been ordered charged off is forever lost to Alabama.

Actual cost, the court emphasized, is the objective in these proceedings and not the price paid to a former owner of the license or the amount paid to an affiliate for such items as engineering fees and equipment rentals. Neither discounts given under a power contract with a seller of property nor amounts paid to secure a release from such a contract constitute original cost.

Expert opinion as to the value of a dam site, resting mainly upon a comparison of the cost of producing power, if developed, with the cost of producing the same amount of power by steam, does not measure cost.

A payment by a licensee to a county for future maintenance of an expensive bridge, to be substituted for a short bridge over a creek because of the raising of the water level, was held not to be an "expense of maintenance item" to be distributed over the period of the license, but a part of the cost of acquiring flood rights. The commission had excluded this payment from cost.

Traveling expenses of engineers of a construction company had been disallowed by the commission although salaries had been prorated as overheads. Their trips often concerned several projects at the same time, all related to construction work. Itemized vouchers had been made and charged as general overhead but with no effort to identify particular projects served. It was impossible to remember sixteen years later the purpose of each trip. The court held that these expenses ought to have been prorated like salaries. It was said that a difference attempted to be drawn was arbitrary.

Bonuses paid to employees in general at the end of the year, although voluntary, were held to be in aim and effect additional wages, properly allowable as part of cost, although a payment to an

architect in the nature of a Christmas gift was excluded. Extra pay to certain key men at the end of the construction, previously promised, was also allowed.

The commission was upheld in disallowing the cost of excess land acquired in order to avoid condemnation of other lands; taxes on land before the date of its inclusion in the project; interest after the maximum date permitted for completion of construction; cost of engineering studies relating to the power system rather than the project; expenses of branch offices of the construction company; expense of maintaining membership in an association to watch legislation; and cost of service emblems for employees of the construction company. *Alabama Power Co. v. Federal Power Commission (No. 10227).*

Rate Increase to Town Not a "General Increase" Under Price Control Law

ALTHOUGH the requirements of the Federal Price Control Act had been met by giving notice to the Office of Price Administration and by consenting to intervention of the Price Administrator, the Maine commission expressed the opinion that a proposed increase in rates to a town did not constitute a "general increase" within the meaning of this new statute. The commission said:

> Under Procedural Regulation 11 of Part 1,300 of Chap. XI of the regulations of the Office of Price Administration of the United States, a public utility seeking a "general increase" in its rates or charges in a proceeding before a regulatory body is required to file with the Office of Price Administration, Washington, D. C., at least thirty days' notice, to "consent to the timely intervention of the Price Administrator" and to file with said office the financial and other data specified therein.
>
> Section 1,300.901 of the regulation, defining the term "general increase," excludes increases of "rates or charges applicable to a particular customer or transportation service under special arrangement."
>
> At the hearing held on December 31, 1942, it developed that, notwithstanding the more inclusive language of the petition, the only increase actually sought by the company is in the rate paid by the town of Castine for fire service.
>
> The town of Castine is a body politic and corporate and a legal entity entirely distinct from its inhabitants and taxpayers and is, we believe, "a particular customer" within the meaning of the above-mentioned section. Therefore, an increase which applies solely to the rates of the town would not appear to be a "general increase" coming within the foregoing requirements.

Higher rates were authorized but not to the extent requested or as provided in a stipulation between the company and the town. Notwithstanding the fact that the parties had agreed upon the rate requested, it remained the duty of the commission to examine all relevant evidence and to determine whether the rate so requested was a just and reasonable charge and whether or not a decree in accordance with the stipulation would be in conformity with the law.

The salary of a company official, amounting to approximately one-fifth of the average gross revenue, was considered excessive as an operating expense. This official no longer resided in the municipality served and gave only part of his time to company affairs.

Additional revenues were considered proper when ample to meet all proper expenditures and provide a return of approximately 5 per cent upon the property. The return, it was said, should properly afford the stockholders a higher rate of income than the 4½ per cent interest to be paid on bonds recently issued with the approval of the commission.

The stipulation had provided for the payment of additional charges to cover possible increases in tax assessments. This, the commission believed, was contrary to the decision of the court in the Caribou Water, Light & Power Company Case, 121 Me 426, PUR1923A 140, 117 Atl 579, and, therefore, was not approved. *Castine Water Co. v. Itself (FC No. 1193).*

THE LATEST UTILITY RULINGS

Charge to Absorb Bridge Toll Allowed over OPA Objections

OVER the objection of counsel for the Office of Price Administration, which had intervened pursuant to the provisions of the Federal Price Control Act of 1942, the Connecticut commission authorized motor bus carriers to charge passengers a toll or surcharge for transportation on routes over a new state highway bridge, crossing the Thames river between New London and Groton. The commutation rates for motor busses, as approved by state officials, is 30 cents per crossing, based on twenty or more single crossings per day. The surcharge of 2 cents per passenger, as allowed, is the same as the proposed toll for each pedestrian using the bridge. The commission said:

> Since the only purpose of the surcharge is to reimburse the petitioner for the tolls it must pay to the bridge authority and since the surcharge would apply only so long as such tolls are in force, the only issue was in the field of price control as related to the national emergency and raised by the Office of Price Administration. This office claimed that the surcharge constitutes a general increase in rates within the meaning and prohibition of the act of Congress and the Federal regulations, referred to above. It also claimed that under the act of Congress and the regulations of the Office of Price Administration seeking to hold rates to September, 1942, levels, the only permissible increases in the rates of a public utility or common carrier are those necessary to fulfill the war-time obligation of the utility or common carrier and to correct gross inequities. It does not seem to the commission, however, that the imposition of this surcharge can be fairly regarded as an increase in rates and, therefore, within the field of price control as related to the national emergency. The state of Connecticut by action of its legislature has decided that recoupment of part or all of the cost incurred in the construction of the bridge should be accomplished by an appropriate charge against those who actually use the bridge. In view of this legislative decision by the state of Connecticut, the public utilities commission, should it disallow the imposition of a surcharge for the use of the bridge by bus passengers, would find itself in the position of attempting an administrative veto of a legislative enactment. Had the legislature and the bridge authority seen fit, either might have prescribed that the toll be collected directly from each passenger and, by charging all users of the bridge for the privilege of using the bridge, it has in effect made the motor bus carrier a toll collector for the state.

Re New Haven & Shore Line Railway Co., Inc. (Docket No. 7300); Re Connecticut Co. (Docket No. 7300).

Disposition of Write-ups

A CONTENTION that an amount in Account 100.5, Electric Plant Acquisition Adjustments, should be left in that account was overruled by the Federal Power Commission, which held that this amount should be properly amortized over a period of ten years.

The company had urged that this was part of the actual investment prudently and necessarily made in the development of the present system and that the investment was made to bring to the system the investors therein and to customers in the area served the benefits of integrated and interconnected electric utility service and more efficient utilization of property constructed and acquired. The commission held that the company had failed to sustain the burden which was upon it to support this contention. The commission declared:

> We need not rest our decision, however, upon COPCO's failure to meet the burden of proof. There is affirmative testimony in the record by the staffs of the commissions which clearly indicates the excess of acquisition cost over original cost represented payments for nuisance value, going value, franchise value, monopoly value, and other similar intangibles. Such evidence consists of letters and reports from COPCO's files which were written at or about the time of the purchases to which they relate.
>
> It is not necessary to theorize as to the

specific type of intangible which this excess represents. The intangibles represented by the excess all have a tendency to merge one into the other and can principally be explained in terms of potential earning power. They represent basically a capitalization of that factor. It is because of this single dominant element common to such intangibles that sound accounting dictates their rapid elimination.

An amount representing profits on engineering and legal fees paid by the company to an affiliate and interest during construction on such profits was held to be a write-up which should be transferred to Account 107, Electric Plant Adjustments. Such profits, the commission ruled, are not a proper part of the cost of electric plant.

Disposition of amounts established in Account 107, Electric Plant Adjustments, was also ordered by charges to various accounts. *Re California Oregon Power Co. (Docket No. IT-5714, Opinion No. 87).*

Temporary Authorization Granted for Gas Service Required under WPB Order

A TEMPORARY certificate of public convenience and necessity was granted by the Federal Power Commission authorizing the Consolidated Gas Utilities Corporation to make connections with and supply service to the Gas Service Company. The War Production Board, under Limitation Order L-31, had directed these companies, respectively, to deliver and accept until further notice the amount of gas which Consolidated could make available.

The certificate was issued for the duration of the present war emergency but not beyond ninety days after cessation of hostilities. Issuance of the certificate, it was stipulated, was without prejudice to the authority of the commission with respect to rates, valuation, costs, services, accounts, or any other matters. It was provided that this would not be construed as an acquiescence by the commission in any estimate or determination of cost, or any valuation, nor should it be considered as a determination of service area under § 7(f) of the Natural Gas Act. *Re Consolidated Gas Utilities Corp. (Docket No. G-438).*

Commission Asserts Authority to Order Removal of Line Dangerous to Airport

THE Postal Telegraph-Cable Company has been ordered by the Pennsylvania commission, at its sole cost and expense, to remove or relocate poles and wires located near an airport so that these facilities will not extend to a height above the level of the center of the paved portion of a runway greater than one-thirtieth of their lateral distance from the nearest point of the exterior boundary of the runway. The present location of these facilities was held to constitute a definite mental and actual hazard to the public using the airport.

Dismissal of the proceeding, instituted by the commission on its own motion, was sought on the ground that the commission has no jurisdiction to enter such an order. The commission rejected as precedents cases holding that the commission lacked power to compel removal of railroad facilities and highway crossings; to repave the highway at such points, or to pay damages due property owners as a result thereof; or to pass on a complaint that smoke and soot from a generating plant are detrimental to health and property of the complainant. Unlike the present case, the commission said, the latter case involved private rights of property owners and was not concerned with public safety.

The commission ruled that it has original jurisdiction to determine whether or not the facilities of a public utility jeopardize the safety of the public. Any action taken in this matter would not be based upon policy but would be based upon the express powers conferred by sections of the Public Utility Law giving the commission jurisdiction over the character of service and facilities, involving questions of adequacy and safety. *Pennsylvania Public Utility Commission v. Postal Telegraph-Cable Co. (Complaint Docket No. 13594).*

Municipal Plant May Charge Different Rates to Urban Consumers

DIFFERENCES in service rendered to consumers within municipal limits and other consumers justify different rates, it is held by the supreme court of Wisconsin. A commission order fixing water rates for the Milwaukee municipal plant had been attacked because of a classification into urban and suburban service, with a different rate for each.

One of the most important considerations, said the court, is the comparative costs of the services. The peak demand made upon the utility by the service furnished to villages differed in amount from the peak demand made by the service furnished within the city. There was also a difference in the distance which the water had to travel. The court gave little weight to these factors. Another factor, having greater weight, was the fact that the cost of constructing the plant came from special assessments within the city while none of these were paid by the suburbs.

Another difference was that the suburban rate included the cost of fire protection service while the urban rate did not. Within the city the cost of protection was paid by taxpayers through the city and was not paid by the consumers.

Finally, it was shown that the service rendered to the suburbs was wholesale, while that rendered to urban consumers was retail. Purchase of water for resale, declared the court, may be used as a proper factor to consider in classifying service.

Inclusion of a tax equivalent in computing operating expenses was sustained. It was pointed out that although the municipally owned utility is tax exempt, it in reality does carry the burden, and under Wisconsin statutes it must account to the municipality. The legislature had authorized inclusion of a tax equivalent as an operating expense. *Village of Fox Point v. Public Service Commission et al. 7 NW(2d) 571.*

Coöperative Association Not Required to Obtain Operating Authority

THE superior court of Pennsylvania has reversed an order of the commission holding that the Philadelphia Association of Wholesale Opticians is not a bona fide coöperative association entitled to conduct a delivery service for the benefit of members without authorization by the commission. (See commission ruling in 43 PUR(NS) 60.)

The commission had charged that the association was illegally transporting property by motor vehicle as a common carrier, for which a certificate of public convenience and necessity had to be obtained. The commission had found that the association was not engaged in common carrier service, and yet in its order to desist it specifically included the obtaining of a certificate of public convenience and necessity, which applies only to common carriers. The commission did not specifically find that the as-

sociation was engaged in contract carrier service, yet it required it to obtain either a certificate of public convenience as a common carrier or a permit as a contract carrier before it could continue to furnish service to its members.

The association provided delivery service for members who paid a fixed weekly contribution to meet the expenses incurred. The court was of the opinion that the association was not transporting property for compensation within the meaning of the Public Utility Law. The court declared:

> The commission seems to be under the impression that everyone who transports property within this commonwealth is either a common carrier or a contract carrier, and subject to its regulation. We have tried several times to disabuse it of that impression but, apparently, without success. See Weisberger *v.* Public Utility Commission (1939) 137 Pa Super Ct 17, 23, 31 PUR(NS) 470, 7 A(2d) 731; Allaman *v.* Public Utility Commission (1942) 149 Pa Super Ct 353, 45 PUR(NS) 495, 27 A(2d) 516. Even the Interstate Commerce Commission Act, in providing for the regulation of "motor carriers," which include both common carriers by motor vehicle and contract carriers by motor vehicle, does not regulate "private carriers" of property by motor vehicle, beyond prescribing reasonable requirements to promote safety of operation. U. S. Code, Title 49, §§ 303(14), (15), (16), (17), 304(1), (2), (3).

Strictly speaking, said the court, only common carriers are public utilities. The commission is given limited jurisdiction over contract carriers by motor vehicle only because in order effectively to regulate common carriers in the public interest it was found necessary to regulate the service of contract carriers in certain particulars, such as prescribing minimum rates and classifying contract carriers.

The sole purpose, it was said, was to aid the public interest to promote safe, adequate, economical, and efficient service by common carriers and just and reasonable rates, and to promote relations between common carriers and other carriers and coördinate their services. Unless such regulation of contract carriers tends to benefit the public interest in common carriers furnishing public service, said the court, there is no constitutional ground for its inclusion as part of the law regulating utilities.

If there be subterfuge or deceptive device or collusion, the commission can always act in protection of the public, said the court, but the mere fact that the coöperative service is more satisfactory and adequate than some prior contract carrier service or common carrier service which it displaced is no ground for action by the commission. *Philadelphia Association of Wholesale Opticians v. Public Utility Commission.*

Larger Deposit by Hotel Justified Where Use of Service Has Increased

A COMPLAINT by a hotel against a telephone company's demand for an additional deposit of $75 where the present deposit was $470 was dismissed by the Massachusetts commission. The company contended that the present deposit was insufficient. It stated that both exchange service charges and toll service charges at the hotel had increased and were still increasing with each successive month. It offered testimony showing an increase from May 31, 1941, of $78.11 to $326.19 as of December 31, 1942.

The company had in effect a schedule providing that in order to safeguard against loss of charges or tolls due at the time service might be terminated, the company might require a customer to make a cash deposit equal to the estimated amount of exchange and toll service charges for any period of two months. Simple interest at 5 per cent per annum is credited on the deposit. *Colonial Hotels Operating Co. v. New England Telephone & Telegraph Co. (DPU No. 6967).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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VOLUME 47 PUR(NS) NUMBER 3

Points of Special Interest

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UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

Hope Natural Gas Company

v.

Federal Power Commission et al.

[No. 4979.]

(— F(2d) —.)

Return, § 11 — Basis — Original cost — Change in price levels.

1. Depreciated original cost cannot be taken as the rate base where there has been a change in the level of prices and the investment in the utility has been made while the "fair value" theory was prevailing, in the absence of legislation establishing prudent investment cost as a rate base prior to dedication of the property to public use or providing for valuation of the property on the basis of fair present value and the use of prudent investment cost in the future, p. 135.

Return, § 9 — Requirements of Natural Gas Act — Fair value basis.

2. The Natural Gas Act makes no provision for a fixed rate base or the exclusive use of prudent investment in determining the base, but it contemplates that the rate base be determined in accordance with existing legal rules requiring a fair return upon fair value in order to avoid confiscation, p. 135.

Return, § 52 — Confiscation — Denial of return on fair value.

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Valuation, § 1 — Present value.

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Valuation, § 22 — Rate base determination — Price changes.

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Evidence, § 9 — Judicial notice — Rise in price levels.

10. Judicial notice is taken of a great and far-reaching rise in price levels, p. 135.

Appeal and review, § 53 — Grounds for reversal or affirmance — Erroneous theory of law — Rate base determination.

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property in determining present value and compute depreciation on the basis of mere formulas, although formulas are important matters for consideration, p. 151.

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Valuation, § 26 — Additions since valuation date.

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Valuation, § 225 — Estimated capital expenditures.

19. The action of the Commission in refusing to allow estimated capital expenditures in expectation of new or increased business was not erroneous or arbitrary where this was purely a matter of estimate, p. 154.

Valuation, § 293 — Cash working capital — Exclusion of gas purchased — Taxes.

20. Elimination of all allowance for gas purchases and taxes from a calculation of working capital is not erroneous or arbitrary when gas is paid for by customers before the utility pays the producers for that gas and taxes are paid long after revenues to which they relate have been collected, p. 155.

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Revenues, § 8 — Profits from processing gas — Affiliate's operation.

23. Crediting to a natural gas company the portion of profits realized by an affiliate which extracts gasoline and other by-products from the natural gas produced by the utility, after allowing cost of processing and a 6½ per cent return upon net investment, is not so arbitrary and unreasonable as to invalidate the action of the Commission, p. 157.

Appeal and review, § 28.4 — Commission decisions — Rates.

24. The court may not substitute its judgment of what is right and proper for that of the Commission in the absence of arbitrary action resulting in a confiscatory rate, p. 157.

Expenses, § 114 — Federal income tax.

25. Taxes, including income taxes paid the Federal government, are proper elements of expense of operation, p. 158.

Expenses, § 9 — Test year.

26. Selection of 1940 as the test year for determining expense of operation in fixing future rates for a natural gas company was not condemned as arbitrary or unreasonable where the increased demand for gas resulting

from war conditions made the experience of that year a safer guide for the future than that of prior years, although ordinarily it would be unsafe thus to adopt the experience of a single year as a guide, p. 158.

Expenses, § 92 — Rate case expense — Amortization period.

27. Amortization of rate case expense of a natural gas company over a 10-year period was held to be reasonable, p. 158.

Return, § 101 — Natural gas company — Factors considered.

28. A finding that 6½ per cent is a reasonable rate of return for a wholesale natural gas company cannot be disturbed when the company is well established with markets in industrial regions protected through affiliates and has financial advantages as a subsidiary of a large oil company that independent utilities do not possess, and where profits earned by industrial corporations and others have declined and interest rates are at a low level, p. 159.

Rates, § 13 — Authority of Federal Power Commission — Retroactive action.

29. The Federal Power Commission, having no authority under the Natural Gas Act to fix rates for the past or to award reparations on account of past rates, has no power to do the same thing indirectly by making findings of fact as to past rates to be given effect in rate proceedings before state Commissions, p. 160.

Commissions, § 28 — Jurisdiction — Statutory limitations — Quasi judicial powers — Past rates.

30. No intention on the part of Congress to vest in the Federal Power Commission the unusual power to exercise the quasi judicial power of determining the reasonableness of past rates ought to be indulged unless conferred in the plainest terms, p. 160.

Rates, § 240 — Schedules — Effect of filing.

31. Rates filed with the Federal Power Commission pursuant to § 4(c) of the Natural Gas Act, 15 USCA § 717c(c), become the only lawful rates which the utility can charge or accept, and until changed by the Commission under the power granted pursuant to § 5(a), 15 USCA § 717d(a), they are binding alike upon the company and its customers, p. 160.

Appeal and review, § 16 — Scope of review — Findings as to past rates — Absence of order.

32. The court, in reviewing a Commission order fixing rates, has power to review findings as to past rates although no order is based thereon, when such findings were made as a step in the proceeding to fix rates for the future; and even if considered separate and apart from this, such findings are reviewable under the Natural Gas Act, since the determination would be, in effect, an order affecting substantial rights and contractual relationships of a party to a proceeding before it and would be reviewable as such, p. 163.

Rates, § 120 — Reasonableness — Effect of subsequent developments.

33. The reasonableness of a rate must be judged in the light of information available at the time it is charged, not in the light of subsequent developments, p. 163.

(Dobie, C. J. dissents.)

[February 16, 1943.]

HOPE NATURAL GAS CO. v. FEDERAL POWER COM.

PETITION to review order of Federal Power Commission reducing interstate wholesale natural gas rates; reversed and remanded. For Commission decision, see (1942) 44 PUR(NS) 1.

APPEARANCES: William B. Cockley (Walter J. Milde, Theodore R. Colborn, William A. Dougherty, Kemble White, and Anthony F. McCue on brief) for petitioner, and Milford Springer, Counsel for the Federal Power Commission, and Spencer W. Reeder, Assistant Director of Law in Charge of utility controversies for the city of Cleveland (Charles V. Shannon, Louis W. McKernan and Howell Purdue, of counsel, for the Federal Power Commission; Thomas A. Burke, Jr., Director of Law for the city of Cleveland; Robert E. May; Alexander W. Parker and Joseph M. Winston, Jr., Attorneys for city of Cleveland; A. F. O'Neil, Director of Law, and Clyde B. MacDonald, Assistant Director of Law for the city of Akron, Attorneys for city of Akron; Claude T. Reno, Attorney General, of the state of Pennsylvania; Harry M. Showalter, Counsel, and Samuel Graff Miller, Assistant Counsel, Attorneys, for Pennsylvania Public Utility Commission, on brief), for respondents.

PARKER, C. J.: This is a petition by the Hope Natural Gas Company, hereafter referred to as "Hope," to review an order of the Federal Power Commission under the provisions of § 19(b) of the Natural Gas Act of June 21, 1938, 52 Stat 831, 15 USCA § 717r(b). Hope, a subsidiary corporation of the Standard Oil Company of New Jersey, was organized under the laws of West Virginia in the year 1898 and since that time has been engaged in the production, transportation, and sale of natural gas. Eighty per cent of its sales are in interstate commerce and are subject to the jurisdiction of the Commission, but its interstate rates had not been regulated prior to this proceeding. In 1938 the cities of Cleveland and Akron, Ohio, filed complaints with the Commission alleging that the rates charged by Hope to the East Ohio Gas Company were unreasonable. The Pennsylvania Public Utility Commission filed complaints that the rates charged to the Peoples Natural Gas Company, the Fayette County Gas Company, and the Manufacturers Light and Heat Company were also unreasonable. The Commission then instituted an investigation, on its own motion, into the reasonableness of all of Hope's interstate wholesale rates; and all of the proceedings relating to these rates were consolidated for hearing before the Commission.

On May 26, 1942, in 44 PUR (NS) 1, the Commission filed its opinion, findings, and order holding that the rates charged since June 30, 1939, were unreasonable and establishing reduced rates for the future, the reduction ordered being approximately 20 per cent in the rates charged the East Ohio Gas Company and the Peoples Natural Gas Company, both Standard Oil affiliates, to which by far the larger part of its sales were made. The rates to these companies were reduced from 36.5 and 35.5 cents per thousand cubic feet to 29.5 and 28.5

cents per thousand cubic feet respectively. Rates to the two other companies, Fayette and Manufacturers, representing a small volume of the total sales, were reduced from 31.5 cents to 28.5 cents.

The reductions in rates were ordered on the basis of findings made as to the value of Hope's property used in connection with its interstate business, the estimated operating expenses of the business and a rate of return upon investment of 6½ per cent. Hope complains of the findings with respect to all of these matters but particularly with respect to the valuation of the property adopted as the rate base. The valuation adopted by the Commission as the rate base was arrived at by taking the cost of the property as shown by the books of the company, corrected for bookkeeping errors but without allowance for price increases or consideration of capital items theretofore charged to expense, and deducting therefrom accrued depreciation based upon the estimated useful life of the property employed without reference to evidence as to its present condition based upon tests and observation. This method was applied to property taken over from other companies as well as to property originally purchased by Hope. The corrected book cost of the property was found to be $51,957,416, and depreciation was found to be $22,328,016 as of December 31, 1940, leaving a net investment of $29,629,400. To this was added $1,392,021 for net capital additions up until the effective date of the order, $566,105 for useful unoperated acreage and $2,125,000 for working capital. This gave a rate base of $33,712,526.

Hope introduced evidence to the effect that prior to 1923 labor costs in well drilling as well as the portion of the overhead expense of the company allocable thereto had been treated as expense in its bookkeeping entries, instead of being charged to capital account; that these items were a legitimate part of the cost of the property and present expenditures of like character were required to be so treated in the system of accounting prescribed by the Commission; that the items representing such expenditures prior to 1923 should be considered by the Commission as a part of the legitimate cost of the property notwithstanding they had been charged to expense; and that, when they were so considered, the cost of the property was shown to be $69,735,000, instead of $51,957,416.

It was shown that the property used by Hope in its interstate business had been constructed over a 40-year period during which there had been great fluctuations in prices and that prices at the time of hearing were at a far higher level than they were during the years preceding the first World War. The Public Utilities Commission of Ohio had found the reproduction cost new of the property, as of June 30, 1937, to be $100,257,000 and its present value after depreciation to be $66,166,382.[1] Hope introduced an estimate of cost of reproduction new amounting to $97,340,000 and a statement showing that the application of price trends to original cost would result in a figure of $105,101,000. This price trend statement showed that for

[1] East Ohio Gas Co. v. Cleveland (1939) 27 PUR(NS) 387, 417. See also table 6 appended to report of Commission in that case but not published in PUBLIC UTILITIES REPORTS.

property placed in public service between 1891 and 1916 at an original cost of $25,249,550 the price trends gave a figure of $52,451,675, whereas for property placed in service between 1917 and 1938 at a cost of $45,303,889 the trended value was only $53,788,551. Hope contended that the allowance for depreciation should have been based on the actual condition of the property as determined by observation with allowance for obsolescence; and that the depreciation allowance resulting was 34.51 per cent. Applying this rate of depreciation to the estimate of the cost of reproduction new of its property, it arrived at a rate base as of December 31, 1938, of $66,360,000.

The Commission found that Hope's estimates of reproduction cost and trended original cost were without probative value and disregarded them, as it did also Hope's evidence as to the observed condition of the property. No consideration was given to the change in price levels which was shown by the estimates and which, even in their absence, might have been noticed as matters of general and common knowledge.

The vital questions in the case relate to the determination of the rate base; and, in view of the low rate of return allowed and the consequent lack of margin to take care of error in the base, the rates allowed must be condemned as unreasonable and confiscatory because of the following errors with respect to the valuation of the property constituting the base: (1) the Commission did not find the present fair value of the property and took no account of the change of price levels in determining the rate base; (2) The Commission ignored items of well-drilling costs and overhead, aggregating in excess of $17,000,000, which entered into the original cost of the property, basing this action on the fact that, under the system of accounting that prevailed at the time, these items had been charged on the company's books to expense; and (3) the Commission ignored evidence as to the present condition of the property and computed accrued depreciation theoretically on the straight-line service-life method. We shall discuss these matters separately in the order named.

Present Value

[1–11] The report of the Commission shows, not only that it gave no consideration to rise in price levels in determining the amount of the rate base, but also that it made no attempt to ascertain the present fair value of the property involved. It adopted as the rate base the original cost of the property as shown by the company's books, adjusted to correct bookkeeping errors and depreciated as above indicated. It took the view that this depreciated book cost could properly be taken as the base without reference to whether it did or did not represent the present fair value of the property, saying: "With the decline in favor of 'fair value' as the only mode of public utility rate regulation, its keystone, reproduction cost, crumbles. Bona fide investment figures now become all important in the regulation of rates."

Much is to be said in favor of the prudent investment theory of determining the rate base. It is simple; it is expeditious; and it avoids the necessity of resorting to unsatisfactory es-

timates of the cost of reconstructing a system that no one would now reconstruct. Where there has been no great change in price levels, it can be taken, subject to appropriate depreciation, as representing the present fair value of the property for rate-making purposes. And even where there have been changes in price levels, prudent investment cost can be thus taken, we think, if such basis has been established by legislative authority prior to the dedication of the property to public use or if statutory provision has been made for valuation of the property on the basis of fair present value and the use of prudent investment cost in the future, and the property has been so valued. See Bauer & Gold, "Public Utility Valuation for Purposes of Rate Control" (1934) pp. 424 et seq. In the absence of such legislation and valuation, however, such depreciated original cost cannot be taken as the rate base where there has been a change in the level of prices and the investment in the utility has been made while the "fair value" theory was prevailing. As is well said in Bauer & Gold, *supra,* pp. 424, 425:

"If the rights and obligations of future investors are exactly set forth, and if systematic provisions are made for enforcement, they would doubtless be held subject to the conditions. If they furnish capital under a policy explicitly enunciated, they can have no grounds for claiming that they are deprived of 'due process.' For all future dealing, legislatures are probably free to establish any policy that seems desirable from the public standpoint. They are probably not required to continue the indefinite basis of dealing with all future investments merely because no definite policies and standards were established in the past.

"The situation, however, is different with regard to properties constructed, or installed in the past. As to these, the funds were contributed under the general law of the land, without exact limitations upon the return. Except for the undefined rule that they were entitled to fair return on fair value, they were not placed under precise and systematic control. If prices increased after the date of investment, the companies have been entitled to have the advance recognized in new valuations. This right probably cannot be abrogated on grounds of public policy unless a proper equivalent is provided. While the right itself is vague and variable, it nevertheless exists and presumably cannot be modified except through replacement by a definite substitute that is fair and reasonable."

And the same authors, in dealing with the method of establishing a fixed rate base "through outright adoption of investment as rate base, starting with existing book value of the properties on the basis of present accounting methods," point out as an objection to it that fluctuation in prices may not be ignored. At pages 432 and 433 they say:

"Besides doubts as to reliability of present book figures, the proposal also raises the question as to how the shift in price level should now be treated in the light of fallen prices. Under the law of the land there is no doubt but that the public is entitled to have fair value determined according to present and prospective prices. If 'fair value' does not rest exclusively upon reproduction cost levels, it certainly must be

determined nevertheless largely with consideration to the price changes that have taken place. Properties installed during the pre-1929 era back to about 1914, would have to be repriced on the basis of the new level. Furthermore, the public is entitled also to have considered the advances in technology which resulted in reduced unit cost of construction. These adjustments would be entirely ignored in outright adoption of book value as the starting point of a fixed rate base.

"These are matters of important consideration in planning and establishing the new policy of control. For the future, the purpose is, of course, to eliminate the factor of price fluctuations from consideration in the rate base. In the past, however, under present law, this has been the dominant element in valuation and primarily responsible for the unsatisfactory conditions of regulation. *But if a fixed rate base is to be established, the question should not be ignored as to how the price changes that have taken place should be provided for in the adoption of initial rate base.*" (Italics supplied.)

There is nothing in the Natural Gas Act which justifies the thought that Congress was providing therein for the exclusive use of the prudent investment theory of property valuation. No "fixed rate base" as advocated by Bauer & Gold is referred to, and no provision is made for initial valuation of properties with addition of subsequent investment costs as the base. On the contrary, the usual general provision for "just and reasonable" rates is made in § 4(a) of the act, 15 USCA § 717c(a); and, as we shall point out hereafter, it is well settled in existing law that, to be considered "just and reasonable," rates must be such as to yield a fair return upon the fair value of the property used in rendering the service. In § 6(a), 15 USCA § 717e(a), provision is made for the Commission to ascertain the actual legitimate cost of the property and the depreciation therein, "and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation *and the fair value of such property.*" (Italics supplied.)

The pertinent sections of the Natural Gas Act, 52 Stat 821, 15 USCA §§ 717c(a), 717d(a), 717e(a)(b), are as follows:

"Section 4. (a) All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful. . . .

"Section 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any state, municipality, state Commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferen-

tial, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates. . . .

"Section 6. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

"(b) Every natural-gas company upon request shall file with the Commission an inventory of all or any part of its property and a statement of the original cost thereof, and shall keep the Commission informed regarding the cost of all additions, betterments, extensions, and new construction."

It was clearly the intention of Congress that under these sections the Commission might investigate and ascertain cost and depreciation of properties of natural gas companies, irrespective of whether a rate inquiry was involved or not, and that, where rate making was involved, the investigation might extend to other facts which bear on cost or depreciation and the fair value of the property. Instead of prescribing a change in the method of determining the rate base, it is clear that the statute contemplates that the base should be determined in accordance with existing legal rules; and it is basic in these rules that the present fair value of the property be ascertained so that rates may be established which will afford a fair return upon fair value and so will not be confiscatory in the constitutional sense. This we understand to be the construction given the act in the recent case of Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 585, 586, 86 L ed 1037, 42 PUR (NS) 129, 62 S Ct 736, where the court, speaking through Mr. Chief Justice Stone, said:

"By long-standing usage in the field of rate regulation, the 'lowest reasonable rate' is one which is not confiscatory in the constitutional sense. Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 305, 77 L ed 1180, PUR1933C 229, 53 S Ct 637; California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 394, 395, 82 L ed 319, 21 PUR(NS) 480, 58 S Ct 334; Denver Union Stock Yard Co. v. United States (1938) 304 US 470, 475, 82 L ed 1469, 24 PUR(NS) 155, 58 S Ct 990. Assuming that there is a zone of reasonableness within which the Commission is free to fix a rate varying in amount and higher than a confiscatory rate, see Banton v. Belt Line R. Corp. 268 US 413, 422, 423, 69 L ed 1020, PUR1926A 317, 45 S Ct 534; Columbus Gas & Fuel Co. v. Ohio Pub. Utilities Commission

(1934) 292 US 398, 414, 78 L ed 1327, 4 PUR(NS) 152, 54 S Ct 763, 91 ALR 1403; Denver Union Stock Yard Co. v. United States, *supra,* 304 US at p. 483, the Commission is also free under § 5(a) to decrease any rate which is not the 'lowest reasonable rate.'

"It follows that the Congressional standard prescribed by this statute coincides with that of the Constitution, and that the courts are without authority under the statute to set aside as too low any 'reasonable rate' adopted by the Commission which is consistent with constitutional requirements.

"The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances." (Italics supplied.)

The conception that, not to be confiscatory, rates must yield a fair return upon the present fair value of the property has long been well settled by Supreme Court decisions. Munn v. Illinois (1877) 94 US 113, 24 L ed 77, established the principle that rates of public utilities were subject to regulation by the state. Mr. Chief Justice Waite who wrote the opinion in that case laid down the limitation, however, in Stone v. Farmers' Loan & Trust Co. (1886) 116 US 307, 331, 29 L ed 636, 6 S Ct 334, 388, 1191, that the power could not be exercised to confiscate the property invested in the utility, saying: "From what has thus been said, it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the state cannot require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation, or without due process of law." Regulation of rates of public utilities differs from ordinary price fixing such as was involved in Nebbia v. New York (1934) 291 US 502, 78 L ed 940, 2 PUR (NS) 337, 54 S Ct 505, 89 ALR 1469, in that, in the case of a public utility, property has been dedicated to the use of the public and the state can require its continued operation, whereas in the case of ordinary property subject to price regulation the owner is not required to sell. By dedicating his property to public use the owner impliedly consents to regulation of its rates by the state; but this consent is conditioned upon his property's not being taken from him under the guise of regulation, i. e., that the rates fixed allow him a fair return upon its fair value. The rule is thus stated in the Minnesota Rate Cases (1913) 230 US 352, 434, 57 L ed 1511, 33 S Ct 729, 48 LRA(NS) 1151, Ann Cas 1916A 18:

"The basis of calculation is the 'fair value of the property' used for the convenience of the public. Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418. Or, as it was put in San Diego Land & Town Co. v. National City (1899) 174 US 739, 757, 43 L ed 1154, 19 S Ct 804: 'What the company is entitled to de-

mand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public.'"

In Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 305, 77 L ed 1180, PUR1933C 229, 240, 53 S Ct 637, cited with approval by Mr. Chief Justice Stone in Federal Power Commission v. Natural Gas Pipeline Co., *supra,* Mr. Chief Justice Hughes laid down the criterion in the following language:

"As the property remains in the ownership of the complainant, the question is whether the complainant has been deprived of a fair return for the service rendered to the public in the use of the property. This court has repeatedly held that the basis of calculation is the fair value of the property, that is, that what the complainant is entitled to demand, in order that it may have 'just compensation,' is *'a fair return upon the reasonable value of the property at the time it is being used for the public.'* In determining that basis, the criteria at hand for ascertaining market value, or what is called exchange value, are not commonly available. The property is not ordinarily the subject of barter and sale and, when rates themselves are in dispute, earnings produced by rates do not afford a standard for decision. The value of the property, or rate base, must be determined under these inescapable limitations. And mindful of its distinctive function in the enforcement of constitutional rights, the court has refused to be bound by any artificial rule or formula which changed conditions might upset. We have said that the judicial ascertainment of value for the purpose of deciding whether rates are confiscatory 'is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts.' Minnesota Rate Cases (1913) 230 US 352, 434, 57 L ed 1511, 33 S Ct 729, 48 LRA(NS) 1151, Ann Cas 1916A 18; Georgia R. & Power Co. v. Georgia R. Commission, 262 US 625, 630, 67 L ed 1144, PUR1933D 1, 43 S Ct 680; Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 690, 67 L ed 1176, PUR 1923D 11, 43 S Ct 675." (Italics supplied.)

Under this rule, in the absence of some such statutory provision as indicated at the beginning of this discussion, the determination of fair present value as the rate base is inescapable if there is to be a "fair return upon fair value." What has declined in favor is not, as the Commission thought, the "doctrine" of fair value, but the cumbersome and misleading reproduction cost theory as a means of determining it. Property has no value except present value. Past value exists only in memeory or in history, future value only in estimate or expectation. It is the property presently existing which belongs to the utility and is used by the public. It is that property which is depreciated through use and which is gradually being sold through depreciation to the public. And it is the value of that property as used which must be considered in fixing rates that will reimburse the company for its partial sale through use and provide an adequate return upon investment. If a piece of

property which cost $10,000 originally but can only be replaced at a cost of $20,000, and is worth $20,000 to the company in carrying on its business, be treated as being worth only $10,000 for the purpose of depreciation and return, the company is deprived of property by the rate in exactly the same way as a merchant who is required to sell for $5 a pair of $10 shoes. It must not be forgotten that it is the property owned by the utility, and not the cash invested by stockholders in its stock, that is devoted to public use; that this property is worn out in furnishing the service which the public receives and which the utility is bound to render; and that, unless the utility receives a rate sufficient to make necessary replacements at current prices with a fair return upon the present fair value of its investment, its property is being taken from it and given to its customers.

The task of arriving at fair present value is a difficult one and necessarily involves exercise of judgment of a high order. The problem is easily oversimplified by those seeking to maintain a thesis. In times of falling prices, those representing the utilities emphasize the importance of original investment cost, while those seeking lower rates point out the folly of fixing rates on the basis of a value which no longer exists and demand that reproduction costs be taken as the criterion. In periods of rising prices, the position of the advocates is reversed. To fix value on original investment cost without reference to change in price levels may easily lead to absurdly high or low valuations, with an undue burden on the public in the case of falling prices and with such confiscation of the property of the utility in the case of rising prices as may result in its ruin. It is idle to argue that the utility should not complain if it recoups through its rates the original investment in its equipment. The law requires that the business of the utility go on. Its equipment must be replaced as it is worn out. And, if the rates allowed are not sufficient to make replacements at current prices, bankruptcy is inevitable. On the other hand, estimates of reproduction cost do not provide a satisfactory method of arriving at value. Aside from the temptation of expert witnesses to overestimate costs in a theoretical reproduction, the fact is that nobody could or would build the utility again as it has grown up through the years. While reproduction cost may be considered, therefore, it is not ordinarily, standing alone, a fair criterion of valuation.

The duty of the Commission to determine the present fair value of the property and to give consideration to all factors entering into that value is thus stated by Mr. Chief Justice Hughes in the case of Los Angeles Gas & E. Co. v. California R. Commission, *supra*, 289 US at p. 306, PUR1923C at pp. 240–242.

"The actual cost of the property—the investment the owners have made—is a relevant fact. Smyth v. Ames, *supra*, 169 US at p. 547. But while cost must be considered, the court has held that it is not an exclusive or final test. The public have not underwritten the investment. The property, on any admissible standard of present value, may be worth more or less than it actually cost. The time and circumstances of the outlay, and

the effect of altered conditions demand consideration. Even when cost is revised so as to reflect what may be deemed to have been invested prudently and in good faith, the investment may embrace property no longer used and useful for the public. This is strikingly illustrated in the present case, where the company has a large gas manufacturing plant which, in view of the supply of natural gas, has not been used for several years and is not likely to be used for many years to come, if at all. But no one would question that the reasonable cost of an efficient public utility system 'is good evidence of its value at the time of construction.' We have said that 'such actual cost will continue fairly well to measure the amount to be attributed to the physical elements of the property so long as there is no change in the level of applicable prices'. McCardle v. Indianapolis Water Co. 272 US 400, 411, 71 L ed 316, PUR 1927A 15, 47 S Ct 144. And when such a change in the price level has occurred, actual experience in the construction and developement of the property, especially experience in a recent period, may be an important check upon extravagant estimates.

"This court has further declared that, in order to determine present value, the cost of reproducing the property is a relevant fact which should have appropriate consideration. Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 287, 288, 67 L ed 981, PUR 1923C 193, 43 S Ct 544, 31 ALR 807; Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, *supra;* Standard Oil Co. v. Southern P. Co. (1925) 268 US 146, 156, 69 L ed 890, 45 S Ct 465; McCardle v. Indianapolis Water Co. *supra.* In Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, *supra,* PUR1923C at p. 199, this court said that 'it is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values, made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded such a forecast becomes impossible.' See St. Louis & O'Fallon R. Co. v. United States, 279 US 461, 485, 73 L ed 798, PUR 1929C 161, 49 S Ct 384. But again the court has not decided that the cost of reproduction furnishes an exclusive test. See Smyth v. Ames, *supra;* Minnesota Rate Cases, *supra;* Georgia R. & Power Co. v. Georgia R. Commission, *supra.* We have emphasized the danger in resting conclusions upon estimates of a conjectural character. We said, in Minnesota Rate Cases, *supra,* 230 US at p. 452: 'The cost-of-reproduction method is of service in ascertaining the present value of the plant, when it is reasonably applied and when the cost of reproducing the property may be ascertained with a proper degree of certainty. But it does not justify the acceptance of results which depend upon mere conjecture. It is fundamental that the judicial power to declare legislative action invalid upon constitutional grounds is to be exer-

cised only in clear cases. The constitutional invalidity must be manifest and if it rests upon disputed questions of fact, the invalidating facts must be proved. And this is true of asserted value as of other facts.' The weight to be given to actual cost, to historical cost, and to cost of reproduction new, is to be determined in the light of the facts of the particular case. McCardle v. Indianapolis Water Co. *supra.*"

In the pending case, original investment cost cannot be taken alone as a measure of the present fair value of the property because of the great changes in the prices of labor and materials which have occurred over the more than forty years during which the investments in the property have been made. These changes are matters of general and common knowledge and are shown by many publications, statistical reports and other documents readily available. That such changes have occurred is shown also by the evidence offered before the Commission. It is true that the statements of reproduction cost and trended original cost fail to allow for the increased productivity of labor and fail to take account of other pertinent factors; and the Commission, we think, was justified in refusing to accept the conclusions therein contained. But this does not mean that the Commission could ignore the change in price levels which was clearly established and was matter of general and common knowledge otherwise. The Commission's staff prepared statements showing that the conclusions of Hope's reproduction cost and trended cost statements should not be accepted. They could doubtless have furnished estimates as to the proper effect to be accorded price trends in the correct valuation of the property. At all events, the Commission should have given consideration to the matter; and, if of opinion that investment cost was a true measure of the present value of the property notwithstanding increase in prices, it should have found this as a fact. It could not absolutely ignore the fact of increased price levels in determination of present fair value. This is clearly laid down by Mr. Chief Justice Hughes in Los Angeles Gas & E. Co. v. California R. Commission, *supra,* and is firmly established by repeated decisions of the Supreme Court.

In the recent case of McCart v. Indianapolis Water Co. (1938) 302 US 419, 82 L ed 336, 21 PUR(NS) 465, 58 S Ct 324, the Supreme Court affirmed a holding of the circuit court of appeals [89 F(2d) 522, 18 PUR (NS) 279] that a decision of a district court should be reversed and the case remanded for a redetermination of value because of an upward trend in prices of which the circuit court of appeals took judicial notice and which the district court had not taken into account. [See 13 F Supp 110, 12 PUR(NS) 478.]

In West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 79 L ed 1640, 8 PUR(NS) 433, 438, 55 S Ct 894, the Supreme Court, in condemning the use of certain price trend indices in connection with cost as establishing present value, said:

"The established principle is that as the due process clauses (Amendments V and XIV) safeguard private property against a taking for pub-

lic use without just compensation, neither nation nor state may require the use of privately owned property without just compensation. When the property itself is taken by the exertion of the power of eminent domain, just compensation is its value at the time of the taking. So, where by legislation prescribing rates or charges the use of the property is taken, just compensation assured by these constitutional provisions is a reasonable rate of return upon that value. To an extent value must be a matter of sound judgment, involving fact data. To substitute for such factors as historical cost and cost of reproduction, a 'translator' of dollar value obtained by the use of price trend indices, serves only to confuse the problem and to increase its difficulty, and may well lead to results anything but accurate and fair. This is not to suggest that price trends are to be disregarded; quite the contrary it true. *And evidence of such trends is to be considered with all other relevant factors.* St. Louis & O'Fallon R. Co. v. United States, *supra;* Clark's Ferry Bridge Co. v. Pennsylvania Pub. Service Commission (1934) 291 US 227, 236, 78 L ed 767, 2 PUR(NS) 225, 54 S Ct 427." (Italics supplied.)

In that case, the district court, departing from the method employed by the Maryland Commission, adopted as the rate base cost less depreciation reserve. This method the court likewise condemned, saying:

"The opinion in essence consists of the conclusion, that, all the circumstances considered, it will be fair to appraise the property at cost less depreciation reserve. This rough and ready approximation of value is as arbitrary as that of the Commission, for it is unsupported by findings based upon evidence." (8 PUR(NS) at p. 443.)

In McCardle v. Indianapolis Water Co. 272 US 400, 411, 71 L ed 316, PUR 1927A 15, 24, 47 S Ct 144, the court in condemning a valuation which did not take account of a change in the level of prices, said:

"Undoubtedly, the reasonable cost of a system of waterworks, well-planned and efficient for the public service, is good evidence of its value at the time of construction. And such actual cost will continue fairly well to measure the amount to be attributed to the physical elements of the property so long as there is no change in the level of applicable prices. And, as indicated by the report of the Commission, it is true that, if the tendency or trend of prices is not definitely upward or downward and it does not appear probable that there will be a substantial change of prices, then the present value of lands plus the present cost of constructing the plant, less depreciation, if any, is a fair measure of the value of the physical elements of the property. The validity of the rates in question depends on property value January 1, 1924, and for a reasonable time following. While the values of such properties do not vary with frequent minor fluctuations in the prices of material and labor required to produce them, they are affected by and generally follow the relatively permanent levels and trends of such prices."

In Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 287, 67

L ed 981, PUR1923C 193, 198, 43 S Ct 544, 31 ALR 807, the court said:

"Obviously, the Commission undertook to value the property without according any weight to the greatly enhanced costs of material, labor, supplies, etc., over those prevailing in 1913, 1914, and 1916. As a matter of common knowledge, these increases were large. Competent witnesses estimated them as 45 to 50 per centum. . . .

"It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded such a forecast becomes impossible. Estimates for tomorrow cannot ignore prices of today."

In Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 689, 67 L ed 1176, PUR 1923D 11, 17, 43 S Ct 675, the court said:

"The record clearly shows that the Commission in arriving at its final figure did not accord proper, if any, weight to the greately enhanced costs of construction in 1920 over those prevailing about 1915 and before the war, as established by uncontradicted evidence; and the company's detailed estimated cost of reproduction new, less depreciation, at 1920 prices, appears to have been wholly disregarded. This was erroneous." See also Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 118, 119, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715.

The case of California R. Commission v. Pacific Gas & E. Co. (1938) 302 US 388, 82 L ed 319, 21 PUR (NS) 480, 58 S Ct 334, is not to the contrary; for it appears in that case that the Commission there received and considered evidence of cost of reproduction and other evidence bearing upon the value of the property. Here no consideration whatever was given to change in price levels and its effect on value, and investment cost less depreciation is frankly taken as the rate base without any pretense that it represents value. As stated above, we find no fault in the action of the Commission in rejecting the estimates of reproduction cost and trended value; and we have considered whether we might not sustain the rate base on the theory that, upon the rejection of these estimates, the only evidence of value before the Commission was the evidence of investment cost. This, however, would be to close our eyes to the rise in price levels which are so great and far-reaching that we must take judicial notice of them, and which are shown by the evidence to that effect included in the estimates. It would be to close our eyes also to the fact that the Commission has proceeded upon an erroneous theory of law in arriving at the rate base.

And there is nothing to the contrary in Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 86 L ed 1037, 42 PUR (NS) 129, 62 S Ct 736. It is true that in that case the court said that the Constitution "does not bind rate-making bodies to the service of any

single formula or combination of formulas"; but substantially the same thing had been said long before in the Minnesota Rate Cases, *supra,* 230 US at p. 434. It had been repeated by Mr. Chief Justice Hughes in the opinion in Los Angeles Gas & E. Co. v. California R. Commission, *supra,* and appears in the opinions in a number of other cases. The concurring opinion does interpret the opinion of the court as holding that the Commission may now adopt prudent investment as a rate base and reject all other formulas. We think, however, in view of the expression in the majority opinion quoted above, to the effect that the rate must be one which is not confiscatory, that, in judging whether the rate is confiscatory or not, historical cost under the prudent investment theory can be adopted as the rate base without reference to other matters affecting value only where it can reasonably be found to represent present fair value. Rate-making bodies may make pragmatic adjustments "within the ambit of their statutory authority," but the ambit of their authority does not extend to action which is confiscatory in character. Original cost or historical cost as shown by the books is evidence of value in all cases and can be adopted as representing present fair value where under all the circumstances of the case it is not unreasonable to do so. But, in the light of the cases cited above, it is unreasonable to adopt it as representing such value when, as in the case at bar, there has been a great change in price levels.

To sum up on this branch of the case: The Natural Gas Act makes no provision for a "fixed rate base" or the exclusive use of prudent investment in determining the base. Not to be confiscatory, rates must allow a fair return upon the present fair value of the property. To determine this fair return upon present fair value, the Commission must find what the present fair value of the property is. The Commission is not confined to any one formula or group of formulas in determining present fair value, but must determine it in the light of all the circumstances of the case. Prudent investment cost with proper allowance for depreciation may in some cases provide, without consideration of anything else, a proper measure of present fair value, but not where following investment there has been a decided change in price levels. Such a change in price levels is shown by the evidence in this case and besides is a matter of such general and common knowledge that the court must take judicial notice of it. The adoption by the Commission of investment cost less depreciation as the rate base, therefore, is arbitrary and unreasonable, does not conform to statutory requirements and is violative of the due process clause of the Fifth Amendment to the Constitution.

Exclusion of Well-drilling Costs

[12–14] Prior to 1923 Hope and the companies from which it acquired properties charged on their books to expense the labor cost directly involved in drilling new wells and the portion of overhead expense properly allocable thereto. The items so charged amounted to approximately $17,000,000, which, of course, does not take account of depreciation or depletion. Under the system of uniform accounts now prescribed by the

Commission, such items are charged, as they should be, to capital investment; and such items since 1923 have been so charged by Hope because of a requirement to that effect in the West Virginia law. In valuing Hope's property, however, the Commission refused to consider in the valuation these items aggregating $17,000,000 (reduced by depletion and depreciation to around $4,000,000), because they had originally been charged on the books to expense, although they clearly represented investment in existing property.

If present fair value be taken as the criterion in determining the rate base, in accordance with our holding as to the legal and constitutional requirements in the premises, there can be no question but that the present fair value of these wells and all elements that have entered into that value must be given consideration, whatever be the method of accounting that Hope may have followed in entering the investment on its books. And, even if the prudent investment theory be adopted for determining the rate base, we see no valid reason for excluding these items from the investment. The wells are existing property used by the utility in its service to the public. The items entered into their cost just as truly as if they had been charged to capital account. No question is raised as to the investment being prudent; and the method of accounting employed with respect to the items cannot change the fact that they represent investment by the company in property which it uses in rendering the service for which rates are prescribed. "Original cost," says Mr. Justice Brandeis in a note to his celebrated dissenting opinion in Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 295, 67 L ed 981, PUR 1923 C 193, 205, 43 S Ct 544, 31 ALR 807, "is the amount actually paid to establish the utility." In this note, which shows very clearly that under the prudent investment theory, historical cost, which is prudent investment, must take account of what the property would have cost on the basis of what normally should have been paid for it. He says:

"Original cost is the amount actually paid to establish the utility. The amount is ascertained, where possible, by inspection of books and vouchers, and by other direct evidence. If this class of evidence is not complete, it may be necessary to supplement it by evidence as to what was probably paid for some items, by showing prices prevailing for work and materials at the time the same were supplied. But the evidence of these prices is merely circumstantial, or corroborative, evidence of the amount actually paid. In determining actual cost, whatever the evidence, there is no attempt to determine whether the expenditure was wise or foolish, or whether it was useful or wasteful. Historical cost, on the other hand, is the amount which normally should have been paid for all the property which is usefully devoted to the public service. It is, in effect, what is termed the prudent investment. In enterprises efficiently launched and developed, historical cost and original cost would practically coincide both in items included and in amounts paid. That is, the subjects of expenditure would coincide; and

the cost at prices prevailing at the time of installation would substantially coincide with the actual cost."

The question arose before the Interstate Commerce Commission in connection with the valuation of the New York, Philadelphia & N. R. Co. (1925) 97 Inters. Com. Rep. 273, 279, where the Commission said:

"The question to be determined is whether the voluntary act of the carrier in charging only a portion of the cost of road and equipment to its investment account estops it from thereafter claiming as investment the additional cost not charged out properly in the first instance. Under the mandate of the statute we are required to find the value of the property of the carrier. The investment account, when properly stated, constitutes evidence of value to which consideration must be given. In this case the investment in property being devoted to carrier purposes on valuation date is incompletely stated in that costs incurred therefor were entered as charges to income. If our present system of accounting had been in force when the entries were made the investment account would have included the amount here claimed as proper.

"In previous cases instances have been found where the investment account has been incorrectly kept, capital expenditures being recorded in operating expenses or as charges to income. In order to obtain an accurate statement of investment it has been necessary in such instances to reconstruct the accounts. Here the carrier has presented evidence of costs that have not been included in our restated investment figure, although the property was found in ownership and use on date of valuation, was inventoried and is included in our estimates of cost of reproduction new and less depreciation. The evidence is persuasive that the investment figure should be increased by the amount of $733,846.13 and our tentative report will be revised accordingly."

It is argued that the items charged to expense entered into the rates paid by the customers of the company, and that the company may not treat as capital investment the expenditures for property thus paid for by its customers. The answer, of course, is that the customers paid for gas, not for the construction of wells, and that neither the cost of the wells nor the company's ownership thereof is affected by the fact that it may have paid for them with the proceeds of rates that were unreasonably high. A very similiar question was before the Supreme Court in Public Utility Comrs. v. New York Teleph. Co. 271 US 23, 70 L ed 808, PUR1926C 740, 744–746, 46 S Ct 363. In that case the company had charged to annual expense an excessive amount for depreciation, which is not different in principle from charging items to expense that should be charged to capital, since in both cases charge to expense is increased and the charge to capital account decreased by the error. In denying a contention that the depreciation reserve thus accumulated, which had been invested in the business, should be used to make up a deficiency in any year when earnings should be less than a reasonable return, the court said:

"Constitutional protection against confiscation does not depend on the

source of the money used to purchase the property. It is enough that it is used to render the service. San Joaquin & K. River Canal & Irrig. Co. v. Stanislaus County (1914) 233 US 454, 459, 58 L ed 1041, 34 S Ct 652; Cedar Rapids Gas Light Co. v. Cedar Rapids (1909) 144 Iowa 426, 434, 120 NW 966, 48 LRA(NS) 1025, affirmed (1912) 223 US 655, 56 L ed 594, 32 S Ct 389; Consolidated Gas Co. v. New York (1907) 157 Fed 849, 858, affirmed (1909) 212 US 19, 53 L ed 382, 29 S Ct 192, 48 LRA(NS) 1134, 15 Ann Cas 1034; Ames v. Union P. R. Co. (1894) 64 Fed 165, 176. The customers are entitled to demand service and the company must comply. The company is entitled to just compensation and, to have the service, the customers must pay for it. The relation between the company and its customers is not that of partners, agent and principal, or trustee and beneficiary. Cf. Fall River Gas Works v. Gas & E. L. Comrs. (1913) 214 Mass. 529, 538, 102 NE 475. The revenue paid by the customers for service belongs to the company. The amount, if any, remaining after paying taxes and operating expenses, including the expense of depreciation, is the company's compensation for the use of its property. If there is no return, or if the amount is less than a reasonable return, the company must bear the loss. Past losses cannot be used to enhance the value of the property or to support a claim that rates for the future are confiscatory. Galveston Electric Co. v. Galveston, 258 US 388, 395, 66 L ed 678, PUR1922D 159, 42 S Ct 351; Georgia R. & Power Co. v. Georgia R. Commission, 262 US 625, 632, 67 L ed 1144, PUR 1923D 1, 43 S Ct 680. And the law does not require the company to give up for the benefit of future subscribers any part of its accumulations from past operations. Profits of the past cannot be used to sustain confiscatory rates for the future. Newton v. Consolidated Gas Co. 258 US 165, 175, 66 L ed 538, PUR 1922B 752, 42 S Ct 264; Galveston Electric Co. v. Galveston, *supra,* 396; Monroe Gas Light & Fuel Co. v. Michigan Pub. Utilities Commission, 292 Fed 139, 147, PUR 1923E 661; Minneapolis v. Rand, (1923) 285 Fed 818, 823; Georgia R. & Power Co. v. Georgia R. Commission, 278 Fed 242, 247, PUR 1922C 744, affirmed 262 US 625, *supra;* Chicago R. Co. v. Illinois Commerce Commission, 277 Fed 970, 980, PUR 1922C 282; Garden City v. Garden City Teleph, Light & Mfg. Co. 236 Fed 693, 696, PUR 1917B 779, 150 CCA 25.

"Customers pay for service, not for the property used to render it. Their payments are not contributions to depreciation or other operating expenses, or to capital of the company. By paying bills for service they do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company. Property paid for out of moneys received for service belongs to the company, just as does that purchased out of proceeds of its bonds and stock."

See also Smith v. Illinois Bell Teleph. Co. 282 US 133, 158, 75 L ed 255, PUR 1931A 1, 51 S Ct 65, and Lindheimer v. Illinois Bell Teleph.

Co. (1934) 292 US 151, 78 L ed 1182, 3 PUR(NS) 337, 54 S Ct 658.

A question arises as to whether the decision in the Public Utility Comrs. v. New York Teleph. Co. *supra,* is not in conflict with what was said in Railroad Commission v. Cumberland Teleph. & Teleg. Co. (1909) 212 US 414, 53 L ed 577, 29 S Ct 357, quoted from and relied on in the brief of the Commission. If there were such conflict, it would be our duty to follow the decision in the New York Telephone Case, *supra,* as it is the latest expression of the Supreme Court on the matter. But rightly understood, there is no conflict in the decisions. In the Cumberland Case, *supra,* 212 US at p. 426, the court said: "We are not considering a case where there are surplus earnings after providing for a depreciation fund, and the surplus is invested in extensions and additions."

We have considered the cases of which Natural Gas Co. v. Public Service Commission, 95 W Va 557, PUR 1924D 346, 121 SE 716, may be taken as typical, to the effect that, when a company has had its rates fixed by a Public Service Commission on the basis that certain items represent expense of doing business, it may not thereafter treat the same items as representing capital investment. Without questioning the soundness of these decisions, we think that they have no application here. This is the first proceeding for fixing the interstate rates of the company. A proceeding in West Virginia in the year 1921 fixed intrastate rates; but these related to the comparatively small portion of the company's business done in West Virginia and had no relation to interstate sales. It does not appear, moreover, to what extent, if any, the well-drilling costs here under consideration were relied upon as expense of operation in the fixing of those rates, or that the rates charged were higher than they would have been if the costs had been charged to capital and the depreciation thereon charged to expense. It is suggested that the local rates of the East Ohio Gas Co. were based upon the interstate charges of Hope; but there were no proceedings before a utility Commission for fixing those rates prior to the time that Hope ceased charging the well-drilling items to expense, and it does not appear to what extent, if any, the rates of East Ohio as fixed by municipal ordinances and court proceedings were affected by Hope's expensing of these items.

It should be kept in mind that what the Commission must determine is the value of the company's property, whether the method used be the prudent investment method or some other. If the property were being condemned, no one would suggest that items which went into the cost of producing it should not be considered as a part of its cost, whatever method of accounting it had employed. If it were being sold on the basis of cost, no court would exclude such items from consideration. And there is as little ground for excluding them from consideration in a proceeding like this, where value is being determined as a basis for rates which must compensate the company for the gradual sale of its property through use as well as provide a return upon its investment. Certainly if the company had charged to capital investment

items which should have been charged to expense, there would be no excuse for not eliminating them in the valuation of the property; and there is as little excuse for not considering as capital investment items erroneously charged to expense. Bookkeeping which does not reflect realities must not be allowed to obscure the real nature of the inquiry.

Depreciation

[15, 16] It is elementary that, whatever method be adopted for arriving at the valuation of the property, account must be taken of accrued depreciation. The Commission computed accrued depreciation by applying the straight-line service-life method to its properties, i. e., by finding a rate of depreciation based on the average service life of property, multiplying this by the years the property had been in use, and applying this percentage to the book cost of the property. The unit of production method was applied to "plant costs associated with gas supply."[2] Hope offered evidence of the present condition of the property, but this was condemned by the Commission as unreliable, and no consideration was given to present condition, other than that arrived at by applying the straight-line service-life formula as the measure of depreciation.

Hope contends that the application of the Commission's formula to book cost results in consequences which are inequitable and absurd in the light of existing facts. Thus, it points out that its well equipment having a book cost at the end of 1938 of $7,610,510 was depreciated to $3,222,807, or 42.4 per cent of its cost, whereas the salvage value of such equipment over the past 10-year period has been 65.2 per cent. Field line equipment having a book cost of $7,934,169 was depreciated to $4,088,602, or 51.5 per cent although the gross salvage value of such material has been 56.7 per cent. Counsel for the Commission challenge the use of the term "salvage value" in connection with this property; but, without going into this controversey, it is sufficient to say that the Commission's method results in a depreciated value which is less than that which the company has accorded similar property under its system of accounting when removed from its wells or lines and held for further use. Other instances of absurd and inequitable consequences resulting from the application of the Commission's formula to book cost are called to our attention; but it is unnecessary to go into them here.

Many of the consequences complained of will be eliminated when the present value of the property is considered in the light of changed price levels and the depreciation percentage is applied to the higher valuations resulting. We think, however, that the Commission may not close its eyes to the actual present condition of the property in determining present value and compute depreciation on the basis of mere formulas, as it has done in this case. The formulas which it has

[2] Hope complains also that, in the case of property acquired from other companies which had been taken over by Hope, the Commission deducted the depreciation reserve of those companies from book cost, even though it exceeded straight-line service-life depreciation accrued at the time. In the view that we take of the broader question, however, it is not necessary to go into this.

used are undoubtedly important matters for it to take into consideration; but its duty, under the law, is to determine the present fair value of the property, and this cannot be done without consideration being given to its actual physical condition. The point was directly involved in McCardle v. Indianapolis Water Co. 272 US 400, 411, 416, 71 L ed 316, PUR 1927A, 15, 29, 47 S Ct 144. In that case deduction for depreciation based on the sort of formulas used here without consideration of the actual condition of the property was disapproved by the Supreme Court, the court saying:

"There is deducted approximately 25 per cent of estimated cost new to cover accrued depreciation. The deduction was not based on an inspection of the property. It was the result of a 'straight-line' calculation based on age and the estimated or assumed useful life of perishable elements. The Commission's report indicates that the property is well-planned, well-maintained, and efficient. Its chief engineer inspected it, and estimated its condition by giving effect to results of the examination and to the age of the property. He deducted about six per cent to cover depreciation. Mr. Hagenah made an estimate of existing depreciation based on actual inspection and a consideration of the probable future life as indicated by the conditions found. He deducted less than 6 per cent. Mr. Elmes testified that he made an inspection and estimate of all the actual depreciation. He estimated $443,044 would be required to restore the property as of appraisal date to its condition when first installed and put in practical operation. He deducted that amount. The testimony of competent valuation engineers who examined the property and made estimates in respect of its condition is to be preferred to mere calculations based on averages and assumed probabilities. The deduction made in the city's estimate cannot be approved."

This was but a restatement of the doctrine laid down in Pacific Gas & E. Co. v. San Francisco, 265 US 403, 406, 68 L ed 1075, PUR1924D 817, 819, 44 S Ct 537, where the court said:

"Appellant objects to the application of this method and insists that depreciation should have been ascertained upon full consideration of the definite testimony given by competent experts who examined the structural units, spoke concerning observed conditions and made estimates therefrom. As these examinations were made subsequent to the alleged depreciation for the definite purpose of ascertaining existing facts, we think the criticism is not without merit. Facts shown by reliable evidence were preferable to averages based upon assumed probabilities. When a plant has been conducted with unusual skill the owner may justly claim the consequent benefits. The problem was to ascertain the probable result of the specified rate if applied under well-known past conditions, not to forecast the probable outcome of a proposed rate under unknown future conditions."

See also Baltimore & O. R. Co. v. United States (1936) 298 US 349, 378, 80 L ed 1209, 56 S Ct 797, where it is said ". . . that opinions of experts unsupported by adequate ac-

tual tests may not safely be substituted for concrete data."

In dealing with this subject, Bauer & Gold, after analyzing the broad concept of depreciation contained in the case of Knoxville v. Knoxville Water Co. (1909) 212 US 1, 53 L ed 371, 29 S Ct 148, go on to say (Public Utility Valuation for Purposes of Rate Control pp. 218, 219):

"The court doubtless intended to deal comprehensively with depreciation in the Knoxville Case. It declared that due current provisions may be made as an operating cost and that all actual depreciation due to expired service life shall be deducted in the determination of fair value. The amount of deduction, however, was left as a matter of proof to be determined through evidence. Its determination, just as the establishment of reproduction cost new, depends upon affirmative proof. The same applies to every phase of valuation. No item can be included or deducted without valid basis of fact. Determination of reproduction cost new, or the primary valuation however determined, is one process; deduction for depreciation is a second. Each must be based upon facts. Neither can be taken out of the air nor based upon hypothetical or theoretical calculations and analyses."

And as bearing upon the necessity of inspection and the weight to be accorded evidence based thereon, it is said at page 220 of this comprehensive and well-considered work:

"Emphasis has been laid upon inspection as against calculation by formula in relation to expired life. The decisions, however, have not rejected the conception that depreciation consists of expired life. They have merely relied upon results on inspection as against abstract calculations of expired life that have not been checked against the realities as determined through physical inspection. While life tables may be important as general guidance, in a particular property or unit the economic life may be much greater or much less than the average presented in a life table. As a calculation based on life tables, expired life of a unit may be 50 per cent, but in reality it may be only 10 per cent because of special conditions relating to the particular item. Conversely, however, theoretical calculation may show expired life of only 10 per cent, while actual depreciation may be 50 per cent.

"The differences in operating and maintenance conditions are so great between utility properties that inspection is necessary to determine reasonably the ratio of expired to total economic life of the different units. The object of examination is determination of this ratio. This may involve estimates as to remaining and relative expired life. But it would be judgment based upon actual inspection rather than upon mere theoretical calculations without regard to the actualities of the property."

[17] Included in accrued depreciation by the Commission were items of $2,107,261 based upon the cost of future abandonment of gas wells and $722,757 upon the cost of future abandonment of other property. Contention is made that, in addition to the error of disregarding the present physical condition of the property in computing depreciation, there was error in adding to depreciation this accrued portion of the cost of future abandonment of property. We cannot

agree with this contention. Prior to 1939, the cost of abandonment, it is true, had been charged to expense as it occurred. Under the Commission's system of accounting, however, the company was required to set up a depreciation reserve to provide for future abandonment; and in computing depreciation here, the portion of the depreciation reserve already accrued was added. The principle applied was manifestly correct. The future cost of abandonment constituted a charge against the property, which would have to be met whatever system of accounting was followed; and as the property was used, account should have been taken of this item as well as of investment already made. The cost of abandonment is not a matter which concerns only the last year of use and can therefore be considered an expense of that year. It is a matter which affects the entire cost of the property and must be taken into consideration throughout its entire useful life.

If a well, for example, has cost $10,000 and abandonment cost will amount to $1,000, the $1,000 as well as the $10,000 must be taken into account in fixing rates and depreciation as the well is used; and, assuming a life of twenty years, it is clear that at the end of ten years the value consumed through use is not merely $5,000, or half the original investment but $5,500, or half the total cost including the cost of abandonment. A purchaser at the end of ten years would not be justified in paying more than $4,500 for the well, because the abandonment cost of $1,000 would fall on him, and the use of the well for the remaining 10-year period would only be worth a total of $5,500 from which the abandonment cost would have to be paid. In the illustration, no account is taken, as it should be, of the fact that the abandonment cost is to be incurred in the future and that the present worth of the sums required for abandonment, and not the principal sum, is the amount properly to be considered. In arriving at the present value of the property, therefore, deduction must be made for the accrued portion of future abandonment cost allocable to the property as well as for depreciation in the investment already made in it, otherwise an inflated valuation will result. In computing the accrued portion, allowance must be made, having in mind the interest bearing quality of money, for the fact that the expenditure is to be made in the future. This is a matter of accounting which it is not necessary to elaborate here. The point is that, in arriving at the present value of the property, it is proper to include in depreciation the accrued portion of future abandonment cost properly computed.

Other Matters Affecting the Rate Base

[18, 19] *Capital addition since 1940.* The Commission accepted Hope's estimate of fixed capital expenditures for the years 1941, 1942 and 1943, amounting to $8,956,500. It deducted expenditures in expectation of new or increased business amounting to $1,270,000 and gross property retirements of $2,700,000, making an estimated net change in plant of $4,986,500. From this it deducted estimated net change in depletion and depreciation reserve after elimination of retirement losses chargeable against reserve, and found an estimated increase in net

actual legitimate cost over the three year period of $2,784,042. This was divided by two, as the rate order became effective at approximately the middle point of the 3-year period, or July 15, 1942. The capital addition thus arrived at was $1,392,021. We find no error in this method. Hope complains of the refusal of the Commission to allow the estimated expenditure of $1,270,000 in expectation of new or increased business; but this was purely a matter of estimate, and we cannot say that the action of the Commission with respect thereto was erroneous or arbitrary.

[20] *Working capital.* The Commission allowed $2,125,000 for working capital. Of this amount $1,228,599 was for material and supplies and is not subject to dispute. $896,401 was for cash working capital. This was arrived at by using forty-five days as the lag in the receipt of revenues, and on this basis dividing by eight (as forty-five days is the eighth part of a year) annual operating expenses, exclusive of gas purchases, taxes, and depreciation expenses. Since the gas which Hope purchases is paid for by its customers before it pays the producers for that gas, and since taxes are paid long after the revenues to which they relate have been collected, we cannot say that there was anything erroneous or arbitrary in eliminating all allowance for gas purchases and taxes from this calculation. Had this been done in Hope's estimate, the result would have been $277,820 less than the amount allowed by the Commission. There is manifestly no error in this connection, therefore, of which Hope can reasonably complain.

Operating Expenses

[21] *Annual depreciation allowance.* Hope complains because the Commission, in computing annual depreciation as an operating expense, has applied the rate arrived at by the straight-line service-life method above described to the original book cost of the property and, in addition, has excluded from consideration the items of approximately $17,000,000 representing well-drilling costs heretofore charged to expense. It is clear, we think, that annual depreciation must be computed on the basis of the present fair value of the property. The question was before the Supreme Court in United R. & Electric Co. v. West, 280 US 234, 253, 254, 74 L ed 390, PUR1930A 225, 231, 50 S Ct 123, where the court said:

"The allowance for annual depreciation made by the Commission was based upon cost. The court of appeals held that this was erroneous and that it should have been based upon present value. *The court's view of the matter was plainly right.* One of the items of expense to be ascertained and deducted is the amount necessary to restore property worn out or impaired, so as continuously to maintain it as nearly as practicable at the same level of efficiency for the public service. The amount set aside periodically for this purpose is the so-called depreciation allowance. *Manifestly, this allowance cannot be limited by the original cost, because, if values have advanced, the allowance is not sufficient to maintain the level of efficiency.* The utility 'is entitled to see that from earnings the value of the property invested is kept unimpaired, so that at the end of any given term of years the

original investment remains as it was at the beginning.' Knoxville v. Knoxville Water Co. (1909) 212 US 1, 13, 14, 53 L ed 371, 29 S Ct 148. This naturally calls for expenditures equal to the cost of the worn-out equipment at the time of replacement; and this, for all practical purposes, means present value. *It is the settled rule of this court that the rate base is present value, and it would be wholly illogical to adopt a different rule for depreciation.* As the supreme court of Michigan, in Michigan Pub. Utilities Commission v. Michigan State Teleph. Co. 228 Mich 658, 666, PUR 1925C 158, 163, 200 NW 749, has aptly said: 'If the rate base is present fair value, then the depreciation base as to depreciable property is the same thing. There is no principle to sustain a holding that a utility may earn on the present fair value of its property devoted to public service, but that it must accept and the public must pay depreciation on book cost or investment cost regardless of present fair value. We repeat, the purpose of permitting a depreciation charge is to compensate the utility for property consumed in service, and the duty of the Commission, guided by experience in rate making, is to spread this charge fairly over the years of the life of the property.' " (Italics supplied.)

While Mr. Justice Butler in a note to his concurring opinion in Lindheimer v. Illinois Bell Teleph. Co. (1934) 292 US 151, 176, 78 L ed 1182, 3 PUR(NS) 337, 54 S Ct 658, stated that the method of computing depreciation there was not in harmony with the principle of the decision in United R. & Electric Co. v. West, *supra,* there is nothing to indicate that the court intended to overrule that decision. The question in the Lindheimer Case was whether charges to depreciation were not excessive in view of expenditures for current maintenance and the proved condition of the property. The affirmative answer given to that question by the court lends no support to the position that, in computing depreciation, the present value of the property may be ignored and depreciation be computed by applying to original cost the straight-line formula. In so far as the decision may be said to have any bearing at all upon that question, it supports the contrary position.

In Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 592, 86 L ed 1037, 42 PUR (NS) 129, 142, 62 S Ct 736, the Supreme Court dealt with an amortization allowance for a "wasting-asset business of limited life." The court said:

"We need not now consider whether, as the government urges, there can in no circumstances be a constitutional requirement that the amortization base be the reproduction value rather than the actual cost of the property devoted to a regulated business. Cf. United R. & Electric Co. v. West, 280 US 234, 265, 74 L ed 390, PUR1930A 225, 50 S Ct 123. It is enough that here the business, by hypothesis, will end in 1954, and that the amortization base, computed at cost and including property already retired, will be completely restored by 1954 by the annual amortization allowances."

Here we are dealing not with a "wasting-asset business of limited life," but with an ordinary public utility which is required by law to con-

tinue its service to the public. One of the principal reasons for determining the present fair value of its property is that rates may be fixed which will take account of depreciation based on that value in such way as to permit replacements at current prices so as to maintain the level of efficiency. This purpose will be defeated, if depreciation is allowed on the basis of cost, where cost is less than present fair value. It will be defeated too, if a portion of the property used is excluded from the depreciated base. The use of the straight-line service-life method of depreciation, like the prudent investment theory of valuation, has the merit of simplicity and ease of application. It can unquestionably be taken into consideration in arriving at depreciation. The Supreme Court has not yet said, however, that it may be used exclusively in cases where, because of change in price levels, cost does not represent fair present value; and the decision in United R. & Electric Co. v. West, *supra,* which has never been overruled, is squarely to the contrary.

In the present state of the law, it would seem clear that, if the present fair value of the property is found to be either greater or less than the original cost of the property less straight-line service-life depreciation, a proper allowance for the difference should be made in computing annual depreciation chargeable as expense. As pointed out by Mr. Justice Stone in his dissenting opinion in United R. & Electric Co. v. West, *supra,* however, the question is not a question of law but one of fact for determination by the Commission on all the evidence before it; and, as said in the work on Depreciation by the staff of the Public Service Commission of Wisconsin (1933) p. 136: "While, as a practical measure, we are convinced that original cost is the proper basis for computing depreciation charges, nevertheless we believe that until the doctrine of the court regarding fair value is changed to prudent investment, it is at least not practical nor plausibly consistent in theory to compute depreciation on any base other than fair value."

[22] And we do not think it proper to ignore, as the Commission did, the element of expense attributable to the depreciation of capital added to rate base after 1940. New property used by the company is subject to depreciation as well as old property; and we see no reason why annual depreciation with respect to the additions made to capital between 1940 and the effective date of the rate order should not have been considered as an element of expense.

[23, 24] *Return from gasoline and butane operations of affiliate.* Hope Construction and Refining Company, another Standard Oil subsidiary, extracts gasoline and other by-products from the natural gas produced by Hope. This is in reality a part of Hope's natural gas business, although carried on by an affiliate. The Commission credited to Hope the portion of the profits realized by the affiliate after allowing cost of processing and 6½ per cent return upon net investment. Although this results in crediting to the utility a greater portion of the net profits of the operation of the subsidiary than is ordinarily credited in such cases, we cannot say that the action of the Commission is so arbi-

trary and unreasonable as to be invalid; and it is well settled that, in the absence of arbitrary action resulting in a confiscatory rate, we may not substitute our judgment of what is right and proper for that of the Commission.

[25] *Federal income tax.* It is elementary that taxes, including income taxes paid the Federal government, are proper elements of expense of operation. The Commission found that $76,579 was a proper amount to allow for Federal income tax for the future, although the evidence was that Hope paid $912,313 in Federal income tax in 1940. Hope contends that the Commission, in adjudging its 1940 rates to be unreasonable, computed its income tax liability at a figure no greater than that estimated for the future, notwithstanding it had actually paid $912,313 on account of Federal income tax in that year. As we have reached the conclusion, as stated more fully hereafter, that the Commission was without power to make findings as to the reasonableness of past rates, except as incidental to fixing rates for the future, we need not determine what allowance should be made for income tax in 1940. So far as rates for the future are concerned, changes in tax laws render irrelevant a discussion of the Commission's figures. In further proceedings to establish rates for Hope, due consideration will doubtless be given to Federal income tax liability in estimating necessary expenses of operation, based upon what income tax Hope will be required to pay on income derived from rates found to be reasonable.

[26] *Selection of 1940 as test year.* The Commission selected 1940 without regard to the exeperience of the years immediately prior thereto, as the test year for determining expense of operation in fixing future rates. It is ordinarily unsafe thus to adopt the experience of a single year as a guide. United Gas Pub. Service Co. v. Texas (1938) 303 US 123, 145, 82 L ed 702, 22 PUR(NS) 113, 58 S Ct 483; West Ohio Gas Co. v. Ohio Pub. Utilities Commission (1935) 294 US 79, 81, 79 L ed 773, 6 PUR(NS) 459, 55 S Ct 324. We do not think that under the peculiar circumstances of the case, however, this action of the Commission can be condemned as arbitrary or unreasonable. The increased demand for gas resulting from war conditions, made the experience of 1940 a safer guide for the future than that of prior years. Hope makes much of the fact that the winter of that year was more than ordinarily severe and that the increased demand for gas resulted in a large percentage of sales representing gas from its own wells, which did not involve payment of the charge required by its contracts on gas purchased from others. The increased demand due to war conditions, however, must necessarily have the same effect, so far as this matter is concerned. The experience of 1940 was the only experience properly comparable. In further proceedings, the experience following 1940 can be added to the experience of that year to form a longer and more dependable test period.

[27] *Other matters affecting operating expenses.* Hope's contention as to depreciation and return on distribution properties is sufficiently covered by what we have heretofore said about the necessity of ascertaining present

fair value. The contention that $165,963 for drilling a dry well should have been charged to expense in 1940 seems well taken; but the matter can have little bearing in future hearings, as the test period will doubtless cover 1941 as well as 1940 and it will be immaterial which year carries the charge. The amortization of rate case expense over a 10-year period seems to be reasonable. It is to be hoped that rate controversies will not be matters of annual occurrence. Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 121, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715.

Rate of Return

[28] The Commission fixed the rate of return at 6½ per cent. There is no controversy as to the rule applicable in determining the rate. "What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield Water Works & Improv. Co. v. West Virginia Pub. Service Commission, 262 US 679, 692, 67 L ed 1176, PUR1923D 11, 20, 43 S Ct 675.

Under this test we think that the rate of return of 6½ per cent is reasonable. Hope is a well-established natural gas company with markets in the industrial regions of Ohio and Pennsylvania protected through its affiliates East Ohio Gas Co. and Peoples Natural Gas Co. As a subsidiary of Standard Oil it has financial advantages that independent utilities do not possess. Cf. Wabash Valley Electric Co. v. Young, 287 US 488, 501, 77 L ed 447, PUR1933A 433, 53 S Ct 234. The record shows that profits earned by industrial corporations on invested capital declined from 11.3 per cent in 1929 to 7.5 per cent by 1940. Profits of railroads declined to 3.3 per cent and of utilities to 5.4 per cent. Interest rates are at a low level and rates of return demanded by investors are among the lowest that have ever existed. Securities of natural gas companies were sold at rates between 3 per cent and 6 per cent, with yields on the bulk of bond issues being between 3 per cent and 4½ per cent. Under such circumstances, a finding that 6½ per cent is a reasonable rate of return cannot be disturbed. A like rate of return was approved by the Supreme Court for natural gas companies in Dayton Power & Light Co. v. Ohio Pub. Utilities Commisison (1934) 292 US 290, 311, 78 L ed 1267, 3 PUR(NS) 279, 54 S Ct 647, and Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315

US 575, 596, 86 L ed 1037, 42 PUR (NS) 129, 62 S Ct 736.

Past Rates

[29–31] The Commission, while fixing rates to become effective July 1, 1942, found that the rates charged by Hope from June 30, 1939 to that date were unreasonable and unlawful and that the charges to the East Ohio Gas Company were "unjust, unreasonable, excessive, and therefore unlawful to the extent of $830,892 during 1939, $3,215,551 during 1940, and $2,815,789 on an annual basis since 1940." It states that it made this finding because the city of Cleveland had raised the question of the lawfulness of the rate charged the East Ohio Gas Company by Hope and had requested that the Commission find the just and reasonable and lawful rate from June 30, 1939 to the date of the Commission's determination "as an aid to state regulation." With respect to its power to take such action, the Commission, in 44 PUR(NS) at pp. 34, 35, said:

"The Commission does not have the authority to fix rates for the past and to award reparations. But Congress did empower and instruct the Commission in § 5(a) of the Natural Gas Act, 15 USCA § 717d(a) to fix future rates, and as a step in that process we must necessarily consider the reasonableness of past and existing rates. When the issue is raised and the public interest will be served, we consider as a necessary part of that duty the power to examine the entire rate problem involved and to determine what rates were lawful in the past. Also, § 14 (a) of the act, 15 USCA § 717m(a), authorizes the Commission to investigate any facts which it finds necessary in order to determine whether Hope has violated any provision of the Natural Gas Act. Furthermore, the Commission has power to perform any act, pursuant to § 16, 15 USCA § 717o, which is necessary or appropriate to carry out the provisions of the act. Under § 4(a) of the act, 15 USCA § 717c(a), any interstate wholesale rate that is not just and reasonable is unlawful. Federal Power Commission v. Natural Gas Pipeline Co. *supra.* Hope's rate collected from East Ohio Gas Company was lawful after June 21, 1938, the effective date of the act, only to the extent that it was just and reasonable. The city of Cleveland states that the Ohio Commission is investigating the reasonableness of the East Ohio Gas Company's bonded retail rates in Cleveland for the period since June 30, 1939, and that the lawfulness of Hope's rate is an important factor in the case. Since the enactment of the 1938 Natural Gas Act this Commission has had exclusive jurisdiction to determine the lawfulness of the interstate wholesale rates charged by Hope and other natural gas companies.

"In response to the request of the city of Cleveland, the Commission will make the appropriate findings of fact as to the lawfulness of the rates charged East Ohio by Hope since June 30, 1939. The Interstate Commerce Commission has furnished precedents for the performance of this public duty. Congress intended that this Commission coöperate with state Commissions and municipalities, and the provisions of §§ 5(b) and 17 are special evidence of such intent."

The fundamental difference between quasi legislative and quasi judicial

power is that the one is concerned primarily with prescribing regulations for the future, the other with determining rights in the light of what has occurred in the past. Cf. Baer Bros. Mercantile Co. v. Denver & R. G. R. Co. (1914) 233 US 479, 486, 58 L ed 1055, 34 S Ct 641. The Natural Gas Act shows clearly that it was the intention of Congress to give the Commission quasi legislative power, i. e., regulatory power as to future rates; but there is no indication of any intention to clothe it with judicial or quasi judicial powers with respect to past charges or practices, such as was vested in the Interstate Commerce Commission by § 9 of the Interstate Commerce Act, 49 USCA § 9. As the Commission itself says, it was not given authority to fix rates for the past or to award reparations on account of past rates. If it was not given the power to fix past rates, or award reparations based upon their unreasonableness, it certainly was given no power to do the same thing indirectly by making findings of fact as to past rates to be given effect in rate proceedings before state Commissions. No intention on the part of Congress to vest any such unusual power in a Commission ought to be indulged unless conferred in the plainest terms; and not only is it not plainly given here, but such power cannot be spelled out of the statutes on any theory of interpretation with which we are familiar.

Section 4(a) of the Natural Gas Act, 15 USCA § 717c(a), to which the Commission refers in its opinion, merely provides that rates shall be "just and reasonable" and declares unlawful a rate that is not "just and reasonable." Section 14(a), 15 USCA § 717m(a), provides for nothing except investigations by the Commission to determine whether or not the act is being violated. The only power with respect to fixing rates is that contained in § 5(a), 15 USCA § 717d(a), heretofore quoted, which is confined to prescribing rates for the future. Section 16, 15 USCA § 717*o*, to which the Commission refers, merely clothes the Commission with power to perform all acts, etc., necessary or appropriate to carry out the provisions of the act. Certainly no power to make findings as to past rates is contained there. Section 5(b) authorizes the Commission upon its own motion or upon request of a state Commission, to investigate and determine the cost of production or transportation of natural gas, not to fix past rates or to do the same thing indirectly by determining that amounts collected in the past exceeded reasonable rates. Section 17, 15 USCA § 717p, does no more than authorize the Commission to refer any matter arising in the administration of the act to a board, members of which are to be nominated by state Commissions, and to authorize the Commission to confer with state Commissions and hold joint hearings with them in connection with any matter "with respect to which the Commission is authorized to act," and to authorize the Commission, in the administration of the act, to avail itself of the coöperation, services, etc., of state Commissions.

In none of these sections is any power granted to make findings as to reasonableness of past rates "as an aid to state regulation"; and in all of them taken together and construed in the light most favorable to the existence

of the power, there is no indication of any intention on the part of Congress to grant such power. We cannot escape the conclusion that, if it had been the intent of Congress to grant unusual power of this sort, it would have said so plainly. Instead of saying so, however, Congress clearly limited the power of the Commission to that of fixing rates for the future by the following provision of § 5(a): "The Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract *to be thereafter observed and in force,* and shall fix the same by order." (Italics supplied.) It is to be noted that in the passage of the Public Utility Act of 1935, upon which the Natural Gas Act is modeled, provisions giving the Commisison power to investigate single rates and issue reparation orders, originally incorporated in the bill, were stricken out, the Senate Committee saying in its report: "They are appropriate sections for a state utility law, but the committee does not consider them applicable to one governing merely wholesale transactions." The Commission may not by administrative interpretation of the act thus clothe itself with a power denied it by Congress. As was said by Mr. Chief Justice Groner in Chenery Corp. v. Securities and Exchange Commission (1942) — App DC —, 44 PUR(NS) 138, 149, 128 F(2d) 303, 311:

"In expressing this opinion, we are not saying that the Commission's view is not directed to a desirable end. As to that, opinions of men of experience and probity and judgment will differ widely. But, if the Commission's objective is to be attained, it should be only after the *pros* and *cons* have been carefully weighed in their relation, respectively, to the dangers and the benefits, and the scales should be controlled by Congress and not by the Commission. In short, all that we hold is that this vital question of policy is one for the Congress and not for the Commission."

When rates were filed with the Commission pursuant to § 4(c) of the act they became the only lawful rates which the utility could charge or accept. Cf. Louisville & N. R. Co. v. Maxwell, 237 US 94, 59 L ed 853, PUR1915C 300, 35 S Ct 494, LRA 1915E 665. Until changed by the Commission under the power granted pursuant to § 5(a) they were binding alike upon the company and its customers; and, in the absence of a provision for award of reparation, there could be no occasion for a determination of their reasonableness except as reason for changing them in an order prescribing rates for the future. The suggestion in the Commission's brief that exercise of power as to past rates is necessary to obviate injustices resulting from delay in rate proceedings lacks force in view of the provision of the statute for the entry of interim orders. Section 16. Cf. Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 583, 86 L ed 1037, 42 PUR(NS) 129, 62 S Ct 736.

As a step in the process of fixing rates for the future, it was of course proper for the Commission to make findings with respect to the conditions and rates of the past, and we shall construe the findings as made pursuant to that power, and as subject to review like other findings made in support of the order. When so considered, they

are invalidated by the same errors that vitiate the findings upon which the order fixing rates for the future is directly based.

[32] It is argued that we are without power to review the findings as to past rates because no order is based thereon; but, as stated above, they are reviewable because made as a step in the proceeding to fix rates for the future. If, however, they be considered separate and apart from this and it be thought, contrary to our view, that the Commission has power to make such findings as to past rates "as an aid to state regulation," we think, nevertheless, that there can be no question as to their being reviewable under the statute. Such determination in that case would be, in effect, an order of the Commission affecting substantial rights and contractual relationships of a party to a proceeding before it and would be reviewable as such, whatever it might be called. Columbia Broadcasting System v. United States (1942) 316 US 407, 86 L ed 1563, 44 PUR(NS) 411, 62 S Ct 1194; Rochester Teleph. Corp. v. United States (1939) 307 US 125, 83 L ed 1147, 28 PUR(NS) 78, 59 S Ct 754. As said by Mr. Chief Justice Stone in the Columbia Broadcasting Case, *supra*, 44 PUR(NS) at p. 418, with respect to whether particular action by the Commission constituted a reviewable order: "The particular label placed upon it by the Commission is not necessarily conclusive, for it is the substance of what the Commission has purported to do and has done which is decisive. Powell v. United States (1937) 300 US 276, 284, 285, 81 L ed 643, 649, 57 S Ct 470; American Federation of Labor v. National Labor Relations Board (1940) 308 US 401, 408, 84 L ed 347, 351, 60 S Ct 300." And as said by Mr. Justice Frankfurter in his concurring opinion in that case: "If an administrative determination of status has the effect of subjecting a person to legal obligations, whether embodied in statute or previously formulated administrative commands, or otherwise affecting legal rights, such a determination possesses the elements of a reviewable order." (44 PUR (NS) at p. 431.) A finding by the Commission which determines that past rates are unlawful in a determined amount, and which is to be given effect by a state regulatory body in determining the reasonableness of rates charged on the basis thereof, certainly affects legal rights; and the power of review under the statute should be coextensive with the power of the Commission to make such determination.

[33] In any view of the matter, therefore, the findings as to past rates are reviewable, and should be set aside for the reasons heretofore given in discussing valuation and depreciation. We are impressed, also, with the thought that the finding as to unreasonableness of these rates cannot be sustained because made on the basis of the utility's experience during the years in question, instead of upon a reasonable estimate of expense based upon experience of a prior period. The reasonablenes of a rate must be judged in the light of information available at the time it is charged, not in the light of subsequent developments. It is manifestly impractical to conduct a wholesale natural gas business on the basis of annual changes in rates; and certainly it is unreasonable

that rates be condemned retroactively on the basis of facts which could not have been known when they were charged.

For the reasons stated, the order of the Commission will be set aside and the cause will be remanded for further proceedings.

Reversed and remanded.

DOBIE, C.J., dissenting: I regret that I must dissent from the majority opinion. The importance of this case, and the wide interest in the vital questions involved, prompt me to set out, very briefly, the reasons for my dissent.

Under the majority opinion, the decision of the Federal Power Commission is reversed on three principal grounds: (1) The adoption by the Commission of the Prudent Investment Theory in fixing the rate base; (2) The use by the Commission of the economic service life method in arriving at depreciation; (3) The refusal by the Commission to allow as capital outlay the well-drilling costs which Hope had previously charged to operating expenses.

(1) *The Prudent Investment Theory*

The Commission, in arriving at the proper rate base, frankly and openly adopted the prudent investment theory and paid no attention to the present value of the properties of Hope. Mr. Justice Brandeis, in his classic concurring opinion (Mr. Justice Holmes joined in the opinion) in Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 67 L ed 981, PUR1923C 193, 43 S Ct 544, 31 ALR 807, has set forth, with his customary incisive clarity, the prudent investment theory, together with the reasons for his belief in that theory. To my mind, the arguments he therein advances have never been convincingly refuted.

Nearly twenty years have slipped by since that opinion was handed down. During this period, the pronouncements of the United States Supreme Court in this field have been many, varied, and quite confusing. This fact has been pointed out by writers whose names are thrice legion. The recent case (involving the Natural Gas Act, with which we are also concerned) of Federal Power Commission v. Natural Gas Pipeline Co. *supra*, however, does call for some comment.

The majority opinion in that case (written by Chief Justice Stone) contains no express discussion of the prudent investment theory and certainly does not in precise terms sanction the use of that theory alone. Interesting, though, in this connection is the oft-quoted statement of Chief Justice Stone (*supra*, 315 US at p. 586, 42 PUR(NS) at p. 138):

"The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts

before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end."

But the concurring opinion of Justices Black, Douglas, and Murphy, on the specific point under discussion, is as clear as crystal and as crisp as bacon; for this opinion flatly and squarely upholds the validity of the application of the prudent investment theory, to the exclusion of any other theory (315 US at p. 606, 42 PUR (NS) at p. 150) in three sentences so free from ambiguity that they cannot be misunderstood:

"As we read the opinion of the court, the Commission is now freed from the compulsion of admitting evidence on reproduction cost or giving any weight to that element of 'fair value.' The Commission may now adopt, if it chooses, prudent investment as a rate base—the base long advocated by Mr. Justice Brandeis. And for the reasons stated by Mr. Justice Brandeis in the Southwestern Bell Telephone Case, there *could be no constitutional objection if the Commission adhered to that formula and rejected all others.*" (Italics ours.)

It is difficult for me to believe that the majority of the Supreme Court, believing otherwise, would leave such a statement unchallenged.

A careful study of the Natural Gas Act (particularly the precise wording of § 6) convinces me that Congress intended to give to the Federal Power Commission a wider latitude and a more extended discretion than had been given to any other Federal Board or Commission under any previous statute in the field of rate making.

Further, I think that the methods adopted by the Commission under the prudent investment theory, in arriving at a rate base in the instant case, were neither fanciful nor arbitrary. It seems to me, too, that there was substantial evidence to support the opposite findings of the Commission.

Accordingly, I see here no adequate reasons for reversing on this score the decision and findings of the Commission.

(2) *The Economic Life Service Method of Computing Depreciation*

In computing depreciation and depletion, the Commission employed the economic life service method. This formula has long been known to, and has been frequently applied by, economists and accountants. It seems to have been often used in connection with depreciation under the Federal income tax. I cannot find in this formula any active germs of constitutional invalidity, as it is applied to the instant case.

The Commission based its determination of existing depletion and depreciation upon actual legitimate cost of the properties of Hope. An apparently competent engineer inspected this property to obtain information that would serve as a guide for estimating the property's service life and the amount of money required annually to reimburse Hope for so much of this property as might be consumed in rendering service to the public.

Incidentally, the amount deducted by the Commission fell short by many millions of dollars of the amount accrued and set up by Hope for depreciation and depletion. In his partially dissenting opinion, Commissioner Scott expressed the view that the Commission had been, in fixing the

amount for depreciation and depletion, far too lenient with Hope.

Again I feel that there was substantial evidence to sustain the Commission's findings under a formula which was neither unrealistic nor capricious.

(3) *Disregard of Drilling Costs Charged by Hope to Operating Expenses*

The Commission refused to allow as capital the amount of drilling cost which Hope had in the past charged to operating expenses. The Commission found (and I think this finding is supported by the evidence) that these costs had been considered by Hope in fixing its rates in previous years and that these costs had already been paid by the consumers. On this ground, the Commission declined to include these costs in arriving at the rate base.

It was the practice of Hope, prior to 1923, to charge well-drilling costs to operating expenses rather than to capital account. In so doing, Hope seems to have followed the then general procedure of the natural gas industry. It changed this practice under a requirement of the Public Service Commission of West Virginia. The present system of accounting prescribed by the Federal Power Commission also follows the West Virginia practice. It is my considered opinion that the present procedure is the proper one.

It is to be noted that this is not a mere mathematical error in bookkeeping, which of course, should be corrected. It is rather an accounting policy. It does not seem to me to be vital whether the decision of the Commission here is based upon technical estoppel, equity or fair dealing. And once more, I think the Commission should be here sustained. Under its present claim, Hope seeks to impeach its books, which were competently kept for a long period of years under the older method. And Hope itself, in a previous rate case before the Public Service Commission of West Virginia, claimed these well-drilling costs as operating expenses, its contention was allowed, and its rates were fixed accordingly.

The holding of the Commission here is sustained by the great weight of authority. In the Commission's brief, these authorities are set out at great length, and include decisions of Federal courts, decisions of state courts, and decisions of State Utility Commissions. Quite striking here, I think, is an extract from the majority opinion in the recent Natural Pipe Line Case, *supra* (315 US at pp. 590, 591, 42 PUR(NS) at p. 140):

"Here the companies, though unregulated, always treated their entire original investment, together with subsequent additions, as capital on which profit was to be earned. They charged the out-of-pocket cost of maintenance of plant, whether used to capacity or not, as operating expenses deductible from earnings before arriving at net profits. *They have thus treated the items now sought to be capitalized in the rate base as operating expenses to be compensated from earnings, as in the case of regulated companies. . . . We cannot say that the Commission has deprived the companies of their property by refusing to permit them to earn for the future a fair return and amortization on*

the costs of maintenance of initial excess capacity—costs which the companies fail to show have not already been recouped from earnings before computing the substantial 'net profits' earned during the first seven years." (Italics ours.)

For the reasons stated, I think the decision and findings of the Commission should be affirmed.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Bradford Electric Company

[E. O. C. No. 2.]

Accounting, § 29.1 — Acquisition expenses — Organization costs of successor company.

Expenses incurred by a successor company in effecting the acquisition of the plant and franchises of its predecessor are proper organization costs of the successor company, includible in Account 100.1, Electric Plant in Service, rather than Account 100.5, Electric Plant Acquisition Adjustments.

Accounting, § 56 — Write-up by predecessor — Affiliated companies.

Discussion, in dissenting opinion, of accounting for a write-up of electric plant by an affiliated predecessor company, involving the question of charging the amount to Account 100.5, Electric Plant Acquisition Adjustments, or to Account 107, Electric Plant Adjustments, under the Uniform System of Accounts, p. 171.

Intercorporate relations, § 14 — Disregard of corporate entity.

Statement, in dissenting opinion, that the law is well settled to the effect that the existence of a corporation can, in a proper case, be disregarded where necessary on the facts of the case to prevent injustice, p. 173.

Accounting, § 38 — War tax — Transfer between affiliate.

Discussion, in dissenting opinion, of the accounting for a war tax on the transfer of property from an affiliated predecessor, p. 175.

Accounting, § 29.1 — Organization expense — Merged company.

Statement, in dissenting opinion, that organization expense appearing on books of subsidiary company acquired by parent should have been retired when the properties were taken over and should be considered an unrecorded retirement classifiable in Account 107, Electric Plant Adjustments, until disposed of, p. 175.

Accounting, § 29.1 — Stamp tax and organization expense — Merged companies.

Discussion, in dissenting opinion, of the proper account to which should be charged a stamp tax on a property transfer and organization expenses of a subsidiary company upon transfer between affiliates, p. 175.

Accounting, § 56 — Write-ups.

Discussion, in dissenting opinion, of accounting for write-ups, with a consideration of the distinction between Account 100.5, Electric Plant Ac-

quisition Adjustments, and Account 107, Electric Plant Adjustments—the latter an account warning investors and the public, p. 176.

(BUCHANAN and BEAMISH, Commissioners, dissent.)

[February ?, 1943.]

REPORT *on studies of original cost of electric plant and reclassification of electric plant accounts; accounting entries ordered.*

By the COMMISSION: Before us for consideration is a revised report filed on March 19, 1942, by Bradford Electric Company covering its studies of the original cost of electric plant and reclassification of electric plant account as of January 1, 1937, in compliance with the Uniform System of Accounts for Electric Utilities and general orders of the Commission. This revised report was filed in lieu of and supersedes an original report filed by the company on August 11, 1939, and is the result of a review by the company of its original studies following representations by the Commission's accounting staff that said original studies did not conform to requirements.

The entries proposed to be recorded by the company to give effect to the reclassification of electric plant account as of January 1, 1937, are as follows:

Account No. and Title	Debit	Credit
100.1 Electric Plant in Service	$1,968,702.67	$.....
100.3 Construction Work in Progress	76,656.47	76,656.47
100.4 Elec. Plant Held for Future Use	299.68	.....
100.5 Elec. Plant Acquisition Adjustments	72,227.63	.....
107. Electric Plant Adjustments	11,124.76	2,873.30
110. Other Physical Property	7,794.48	.....
100.6 Electric Plant in Process of Reclassification	.....	2,057,275.92
Totals	$2,136,805.69	$2,136,805.69

Our analysis of the company's revised report and its studies resulting therein indicate that the reclassification of plant accounts was made in conformance with effective regulations. Therefore, we accept the amounts proposed to be entered in accounts 100.1, 100.3, and 100.4, as above, as representing the original cost of the company's electric plant at January 1, 1937, subject to one adjustment. In its reclassification studies, the company has included in account 100.5 an amount of $1,446.88 representing expenses incurred in effecting the acquisition of the plant and franchises of Eldred Electric Company. We consider such expenses to be proper organization costs of the successor company, and the amount thereof will be so treated herein thus increasing the amount includible in account 100.1 to $1,970,149.55, and decreasing the amount includible in account 100.5 to $70,780.75.

The nature of the amounts proposed to be entered in accounts 100.5 (as adjusted by us) and 107, as well

as the disposition thereof proposed by the company, are outlined below:

Item	Amount	
Account 100.5 Electric Plant Acquisition Adjustments		
To be charged to Surplus:		
Balance, at Jan. 1, 1937, of plant increment resulting from recording of appraised values by Bradford Elec. Lt. & Pr. Co. on December 31, 1917	$76,440.70	.....
Less: Unidentified plant retirements per books not identifiable as retirements of constructed plant	9,651.89	$66,788.81
To be charged during 1942 to account 505, Amortization of Electric Plant Acquisition Adjustments:		
Balance remaining of excess of purchase price over original cost —Eldred Elec. Co. property	3,691.94	.....
War tax covering transfer of deed from Bradford El. Lt. & Pr. Co.	300.00	3,991.94
Total—Account 100.5		$70,780.75
Account 107, Electric Plant Adjustments		
To be charged to Surplus:		
Capital stock expenses, etc., erroneously included in Organization account	.....	11,124.76
To be credited to account 265, Contributions In Aid of Construction:		
Customers' contributions toward plant construction credited to plant accounts in error	.....	* 2,873.30
Total—Account 107		$8,251.46

*In red

We are of opinion that the foregoing proposed interim accounting for items to be included in Accounts 100.5 and 107 is in accord with the provisions of our accounting regulations, and that the proposed final disposition of the amounts included in said accounts is reasonable and proper in the light of the character of the items involved; therefore,

Now, to wit, February 2, 1943, it is *ordered:* That Bradford Electric Company record the following entries on its books to effect the reclassification of its electric plant accounts at January 1, 1937:

	Debit	Credit
100.1 Electric Plant In Service	$1,970,149.55	.....
100.3 Construction Work in Progress	76,656.47	$76,656.47
100.4 Electric Plant Held for Future Use	299.68	.....
100.5 Elec. Plant Acquisition Adjustments	70,780.75	.....
107. Electric Plant Adjustments	11,124.76	2,873.30
110. Other Physical Property	7,794.48	.....
100.6 Elec. Plant In Process of Reclassification	.....	2,057,275.92
	$2,136,805.69	$2,136,805.69

It is *further ordered:* That the amounts included in Accounts 100.5 and 107 by virtue of the foregoing entries, shall be disposed of forthwith by Bradford Electric Company by recording the following entries on its books:

		Debit	Credit
271.	Earned Surplus	$77,913.57	$.....
505.	Amortization of Electric Plant Acquisition Adjustments	3,991.94	.....
265.	Contributions in Aid of Construction	.....	2,873.30
100.5	Electric Plant Acquisition Adjustments	.....	70,780.75
107.	Electric Plant Adjustments	2,873.30	11,124.76
		$84,778.81	$84,778.81

It is *further ordered:* That the accounting entries herein directed to be recorded shall not preclude the Commission from ordering further adjustments in the company's electric plant accounts which the Commission may deem warranted upon any future consideration of the amounts remaining therein as the result of the reclassification studies.

Commissioners Buchanan and Beamish file dissenting opinions.

BUCHANAN, Commissioner, dissenting: This matter is before us upon a report filed March 19, 1942, by Bradford Electric Company covering the reclassification of its electric plant accounts as of January 1, 1937, in compliance with Instruction 2D of the Uniform System of Accounts and General Order No. 53 of this Commission.

The difference between the majority and minority involves a very important principle. Its importance may be gauged by the fact that although the amounts here involved are relatively small, the precedent established will radically affect electric utility assets in Pennsylvania approximately a billion and a quarter dollars. It will have controlling effect upon the question of whether Pennsylvania consumers shall continue to pay excessive rates based on inflated capitalization placed upon the books of Pennsylvania electric utilities at the direction of holding companies, affiliated interests and "free enterprise" financiers.

The amount of dollars directly dependent upon this decision, as a precedent for future actions of this Commission, may be conservatively estimated at $250,000,000. Based on the national experience of Federal Power Commission involving inter alia electric utilities affiliated with Pennsylvania electric utilities, the amount directly affected would reach 30 per cent of fixed capital, or, $360,000,000.[1] The total of utility assets in Pennsylvania which will be both directly and

[1] "Over 250 public utilities have filed original cost studies contemplated by the System of Accounts with the Federal Power Commission. They report a total excess cost over original cost of $735,000,000. The amount, we believe, is considerably under the proper figure.

The Commission's staff so far has made about 70 field studies. In 59 of these, the staff has increased the excess over original cost of $148,000,000, reported by the companies, to about $400,000,000. The latter figure is associated with original cost of $1,450,000,000, as shown by staff reports. The excess over original cost approximates 27 per cent."

Excerpt from statement made by Leland Olds, Chairman, Federal Power Commission before the National Industrial Conference Board, New York city, May 20, 1942.

"The Commission announced that as of August 1, 1942, there were 273 of these reports filed with it. These studies represent a reclassification of eight and one-quarter billion dollars of plant as of January 1, 1937. The

indirectly affected by this decision of the majority might reach or even exceed half a billion dollars.

Bradford Electric Company was incorporated June 29, 1918, by the stockholders of Bradford Electric Light and Power Company for the express purpose of taking over Bradford Electric Light and Power Company. Bradford Electric Company (called Bradford) also acquired the ownership of Eldred Electric Company inter alia and later absorbed both by merger prior to January 1, 1937.

Both majority and minority are in agreement on the original cost of Bradford's electric plant which approximates $2,000,000. Our divergent views revolve around the sum of $70,780.75 which the majority believes should be classified in Account 100.5 but which the minority believes belongs in Account 107. The foregoing amount is composed of three elements as follows:

1. Write-up of electric plant of Bradford Electric Light and Power Company prior to the transfer of assets to Bradford Electric Company, an affiliated company on January 1, 1919 ..	$66,788.81
2. War tax covering transfer of properties as above	300.00
3. Organization cost of Eldred Electric Company	3,691.94
Total	$70,780.75

Bradford Electric Light and Power Company made a direct write-up on its books of accounts. The company then transferred all of its assets in exchange for the securities of the Bradford Electric Company. There had been a change in corporate identity so far as the corporate fiction was concerned but the actual ownership of Bradford Electric Company after the transfer of assets was identical with the ownership that caused the write-up on the books of Bradford Electric Light and Power Company. The majority, therefore, relies on the corporate fiction as its sole basis for its designation of the transaction as an "acquisition" by Bradford Electric Light and Power Company's assets and, therefore, classifiable under Account 100.5. This is just so much humbug and springs from the "wish as the father of the thought."

The text of the Uniform System of Accounts prescribed by the Federal Power Commission and adopted by this Commission on January 1, 1937, specifically rules this matter:

"107 Electric Plant Adjustments.

"A. This account shall include the difference between the original cost, estimated if not known, and the book cost of electric plant, at the effective date of this system of accounts, to the extent that such difference is not properly includible in Accounts 100.5, Electric Plant Acquisition Adjustments. Write-ups of electric plant

	Original Cost	Excess Cost	% of Excess
Electric plant of public utilities ..	$1,399,444,475	$421,110,386	30%

Of the $421,110,386, the amount of $362,066,784, or 86 per cent is classifiable in Account 107, which is the account provided specifically for write-ups."

Federal Power Commission Release No. 2066 Nov. 4, 1942.

273 companies filed studies showing $749,375,664.99 excess over original cost of electric plant. Staff adjustments in the 64 field examinations made to date increase this figure to $1,008,282,007.88. Of particular significance is the fact that only $232,879,195.96 was reported by the 273 companies as classifiable in Account 107 (the account for write-ups), whereas staff adjustments in 64 cases alone have increased this figure by $326,118,834.24, or almost one hundred million dollars more than originally classified therein by the entire 273 companies.

prior to the effective date of this system of accounts shall be recorded herein.

"B. The amounts included in this account shall be classified in such manner as to show the nature of each amount included herein and shall be disposed of as the Commission may approve or direct.

"NOTE—The provisions of this account shall not be construed as approving or authorizing the recording of appreciation of electric plant."

The write-up which is the basis of this dispute was made prior to January 1, 1919 on the books of Bradford Electric Light and Power by the same management (stockholders) as those which the majority reason were different because of the mere change in corporate name. The write-up was clearly prior to the effective date of the System of Accounts and as Account 107 states *"shall be recorded herein."*

The majority takes the view that inasmuch as legally a new corporation came into existence when Bradford Electric Company was created, the cost to it is different from the cost of the same assets to its affiliated predecessor, Bradford Electric Light and Power Company. The majority, therefore, holds that the write-up in the books of the latter became a *cost* to the former upon the transfer of properties. Consistent with this view, they maintain the amount of the books of Bradford Electric Company in excess of original cost of properties is classifiable in Account 100.5 as an "acquisition adjustment." Acquisition adjustments represent the difference between actual cost (purchase price) and original cost. Account 100.5 reads as follows:

"A. This account shall include the difference between (a) the cost to the accounting utility of electric plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and (b) the original cost, estimated if not known, of such property, less the amount or amounts which may be credited to the depreciation and amortization reserves of the accounting utility at the time of acquisition with respect to such property. The account shall be so subdivided when practicable as to show the amounts applicable to electric plant in service, electric plant leased to others, and electric plant held for future use. (See Electric plant instructions 2, 3, and 4.)

"B. Whenever practicable, this account shall be subdivided according to the character of the amounts included herein for each property acquisition.

"C. The amounts recorded in this account with respect to each property acquisition shall be depreciated, amortized, or otherwise disposed of, as the Commission may approve or direct."

What the majority actually holds is that under this account the stockholders who pulled out of their pockets stock certificates of Bradford Electric Light and Power Company and drew a line through the words "Light and Power" and put the certificates back in their pockets had thereby added value to them. The minority finds it impossible to see how a transaction of this nature results in an actual cost to Bradford Electric Company in excess of the actual cost to the predecessor.

Everybody condemns transactions

of this kind. In positions of trust, to effect such frauds is a criminal act. We can see no difference here. As representatives of the public interest, a trust placed upon us by law, this Commission has an obligation to require that the amount of such write-ups be shown on the balance sheets of public utilities so that no reader thereof shall be misled. Account 107 is a balance sheet account and was deliberately made so. Account 100.5 is not a balanec sheet account, but the amounts therein are includible, hidden is a better word, in utility plant in the balance sheet. It is a generally accepted rule today among public accountants that inflationary items must be fully disclosed. It is the basis of the Public Utility Holding Company Act of 1935 and its "truth in securities" policy. Certainly there is no better way for disclosure of inflationary items than setting forth the items separately in the balance sheet.

The majority in relying upon the corporate fiction as the basis for classifying the write-up in Account 100.5 as cost of acquisition seems to forget the Commission"s unanimous opinion, informally expressed, in the Harley D. Carpenter matters.[2] Harley D. Carpenter as an individual and as the owner of all of the stock of ten corporate public utilities had so muddled his books of accounts and corporate records as to require us to informally direct our accounting staff to ignore the corporate fiction and to treat the ten corporations and the individual as one. The Carpenter matter should receive the same treatment as Bradford, and vice versa.

The law is well settled to the effect that the existence of a corporation can, in a proper case, be disregarded where necessary on the facts of the case, to prevent injustice.[3] There can be no doubt of the injustice made possible through classification of

[2] Pennsylvania Public Utility Commission v.

C. 13544—Conneaut Lake Borough Electric Service Company and Harley D. Carpenter, trading as an individual utility.

C. 13545—Conneaut Lake Electric Light and Power Company of Sadsbury Township and Harley D. Carpenter, trading as an individual utility.

C. 13546—East Fairfield Township Crawford Public Service Company and Harley D. Carpenter, trading as an individual utility.

C. 13547—East Fallowfield Light and Power Company and Harley D. Carpenter, trading as an individual utility.

C. 13548—Fairfield Township Light and Power Corporation and Harley D. Carpenter, trading as an individual utility.

C. 13549—Saegertown Borough Electric Service Company and Harley D. Carpenter, trading as an individual utility.

C. 13550—Sparta Township Crawford Public Service Company and Harley D. Carpenter, trading as an individual utility.

C. 13551—Union Township Crawford Public Service Company and Harley D. Carpenter, trading as an individual utility.

C. 13552—West Fallowfield Light and Power Company and Harley D. Carpenter, trading as an individual utility.

C. 13553—Cochranton Borough Electric Service Company and Harley D. Carpenter, trading as an individual utility.

[3] Owl Fumigating Corp. v. California Cyanide Co. (1929) 30 F(2d) 812, it was said that: if one corporation is mere agency or department of another, courts will place responsibility where it actually belongs.

In Illinois Bell Teleph. Co. v. Moynihan, 38 F(2d) 77, 80, PUR1930B 148, 153, it was said: "Courts, of course, will look through form to substance. Where the power of stock ownership is so exercised as to commingle the affairs of the corporations and make them practically one, courts will not permit themselves 'to be blinded or deceived by mere forms of law, regardless of fiction, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require.'" See also United States ex rel. Attorney General v. Delaware & H. Co. (1909) 213 US 366, 53 L ed 836, 29 S Ct 527.

write-ups between affiliated interests under Account 100.5. The provisions of that account permit the depreciation or amortization of the items classified thereunder as the Commission directs. Such provision would permit the amortization of such write-ups "above the line" or as an operating expense, i. e., charge against the ratepayers, who would thus become innocent victims of the misconduct of the stockholders. Account 107 on the other hand by the very nature of the items includible thereunder, requires disposal of the items "below the line" which is a charge against income and, therefore, a charge against the stockholder who perpetrated the original deceit. The majority ruling here would permit the perpetuation of the original fraud by a transfer of the amortization of the write-ups to the backs of the ratepayers through 100.5 in order to relieve the stockholding wrongdoer although this is only partly true in the instant action. The minority would place the burden where it rightfully belongs, on the owners who conceived the evil. If the possibility presented by the majority opinion was to take place in the original cost determination of other Associated Gas and Electric Company properties or Electric Bond and Share properties or others, millions of dollars of inflation would be liquidated by ratepayers thereby effecting a grave injustice.

Summarizing the matter, the majority holds that by the issuance of some additional stock certificates by Bradford Electric Company additional value was added to the property of Bradford Electric Light and Power at the time of the transfer.

The principles which we of the minority advocate are those generally accepted in practically every other jurisdiction both state and Federal.[4]

The $300 tax item represents a war

Perhaps the clearest statement of the applicable law is contained in the opinion at Albrecht & Son v. Landy (1939) 27 F Supp 65, 69: "A wholly owned subsidiary corporation may be a corporate entity, but, at the same time, it may be a mere instrumentality of the parent corporation to carry out its purpose and business. This question has been considered many times by the courts.

. . .

"In considering an attempted reorganization in Gregory v. Helvering (1935) 293 US 465, 469, 79 L ed 596, 55 S Ct 266, 267, 97 ALR 1355, the court said: 'Putting aside, then, the question of motive in respect of taxation altogether, and fixing the character of the proceeding by what actually occurred, what do we find? Simply an operation having no business or corporate purpose—a mere device which put on the form of a corporate reorganization as a disguise for concealing its real character, and the sole object and accomplishment of which was the consummation of a preconceived plan, not to reorganize a business or any part of a business, but to transfer a parcel of corporate shares to the petitioner. No doubt, a new and valid corporation was created. But that corporation was nothing more than a contrivance to the end last described.' . . .

"'The rule is frequently stated in the following terms:

"'"(1) The legal fiction of distinct corporate existence will be disregarded, when necessary to circumvent fraud. (2) It may also be disregarded in a case where a corporation is so organized and controlled, and its affairs are so conducted, as to make it merely an instrumentality or adjunct of another corporation." Re Watertown Paper Co. (1909) 169 Fed 252, 256.'"

[4] A partial list of Federal decisions are listed below:

Federal Power Commission: In Re Central Vermont Public Service Corporation Release Docket, I.T. 5807; Re Louisiana Pub. Utilities Co. (1942) I.T. 5811; Re Delaware Power & Light Co. (1943) I.T. 5810; Re Eastern Oregon Light & P. Co. (1943) I.T. 5815; Re Pacific Power & Light Co. (1942) Opinion No. 84, I.T. 5611, 46 PUR(NS) 131; Re Carolina Power & Light Co. (1942) I.T. 5701; Re St. Croix Falls Minnesota Improv. Co. (1942) Opinion No. 72, 43 PUR (NS) 1.

Securities and Exchange Commission: Re Public Service Co. of Indiana (1942) Public Utility Holding Company Act Release No. 3521; Re Iowa Pub. Service Co. (1938) 3 SEC 1043, 1046.

tax on the transfer of properties from Bradford Electric Light and Power Company to Bradford Electric Company through the affixing of stamps on the deed. The transaction did not result in an increase in property. For all practical purposes the same owner continued in possession thereof, hence the expenditure was something that has no place in the plant account. It is elementary that taxes are not capitalizable under any circumstances.

The third item represents what appears on the books of Eldred Electric Company as organization expense. The latter company was a subsidiary of Bradford Electric Company. When the properties of Eldred were taken over by Bradford, the organization cost of Eldred should have been retired. That part of the investment of Bradford in Eldred which could be associated with organization items should have been removed from the accounts at the time of the merger. It should be considered an unrecorded retirement which according to established practice in all other jurisdictions is classifiable in Account 107 until disposed of.

These three items are similar to alleged costs of the Associated Gas and Electric Company which this Commission attacked so vigorously five years ago but today's action seems to indicate a change of heart as well as a change of personnel. To treat these write-ups as the majority has done is to be guided by form rather than substance.

There is one other point of disagreement. The majority has directed that the amount of $3,991.94 (the sum of items 2 and 3, *supra*) included in Account 100.5, be charged off to Account 505, Amortization of Electric Plant Acquisition Adjustments. Even if the amount were properly classifiable in Account 100.5 this method of disposing of the items is wrong and indicates the danger in the philosophy of the majority. Account 505 is in the operating expense section and is, therefore, a direct obligation of the ratepayer. Account 537 is the proper account to be charged which would place the burden of the war stamp tax and organization expenses on the stockholders who received the benefit. Even in arm's-length transactions, cost in excess of original cost should not be treated as operating expenses. Intangibles are properly chargeable to Account 537 never to Account 505. St. Croix Falls Minnesota Improv. Co. F. P. C. Opinion No. 72, *supra*.

In this case only small amounts are involved yet the principles are most important. The accounting practices advocated by the majority raise the red signal flag of "danger." They are against the public interest. The next step following the Bradford matter is the reclassification of the books of its affiliate in the Associated Gas and Electric Company group, Pennsylvnia Electric Company. There we will deal with many millions appertaining to like transactions. Application of the accounting chicanery present in this order can only result in transferring inflated capital to the ratepayer openly, boldly and with the sanction of law, that is, with the approval of the majority of this Commission Bradford Electric Company could do but a slightly better job in its own interest. Appeasement and rubber stamping are synonymous.

Here we are dealing with public

utilities which are subject to the pragmatic adjustments made necessary by the presence of public interest. The elements required for a decision are common sense and an ordinary appreciation of equity and justice.

The respondent is a public utility. The public interest involved in such cases is the effect of any action by management upon the consumer. This is not true of competitive private business where bargain and sale is the rule and the law of caveat emptor applies. In private business write-ups such as took place in this case affect none but the parties who made it, the stockholders. Therefore, to follow the accounting principles advocated by the majority may be the rule in general accounting for which I can find little support, but in public utility accounting, an innocent third party, the consumer, enters the picture which requires a practical adjustment of accounting procedure to meet the changed condition. The law is well settled, "when one of two innocent persons must suffer, he, whose neglect has caused the loss, must bear it." Re Ridgway, Budd & Co. (1850) 15 Pa 177; Shattuck v. American Cement Co. (1903) 205 Pa 197, 54 Atl 785; 19 American Jurisprudence 335, etc.

Where true orginal cost has been recorded on the books of accounts of public utilities and the burden of carrying inflated capital values and inflated intangible costs has been taken from the backs of the ratepayers through a charge-off to income, regulation of public utility rates and service in the public interest becomes greatly simplified and much less expensive. Where a thorough purging of the books does not take place, rate making in particular remains the same old laborious, time-consuming, expensive process. An example of what can result from a purge of the books and the application of the original cost principle is found in the very recent decision of the Federal Power Commission in Re Northern Nat. Gas Co. (Omaha, Nebraska). Quoting from the Federal Power Commission's Release No. 2134 (G–479), the Commission said in a memorandum opinion:

"The company and the Commission were saved considerable expense that would otherwise have been required if a more extended formal investigation were to be made and hearings held." And adds:

"This case and the others like it are examples of regulation made effective and simple by the use of the original cost formula and acceptance of the principles by the companies involved. The results are reasonable and fair to the companies and to the public."

Because the majority order indicates an undoubted preference for the investor over the consumer; because it is our sworn duty to protect the consumer from such practices, as set forth herein, I must record my objection to the majority order.

BEAMISH, Commissioner, dissenting: I cannot agree with the action of the majority in placing the item of $66,788.81 in Account 100.5 in this matter.

The amount in question is an admitted write-up which, in my judgment, should be placed under the classification of Account 107.

Bradford Electric Light and Power Company transformed itself into Bradford Electric Company on June

29, 1918, for the sole and express purpose of taking over the property and operations of the power company. These two companies were owned and operated by the same persons. In the transaction there was an issuance of securities of Bradford Electric Company which included this write-up of the electric plant. There was no arm's-length bargain. The seller was the buyer and, as such, dictated the write-up. The inflated cost was wholly artificial in character and, as such, had no basis in cash or in any reasonable consideration. It was in truth a pretended cost and was not in any sense a real cost. As a write-up its effect could not be otherwise than to depress the value of shares for which actual cash was paid and to tend to increase the burden upon ratepayers by furnishing a basis for increased rates.

The Uniform System of Accounting, under which both Federal and state Commissions operate, provides for a classification known as Account 107 into which are placed write-ups by affiliates operating at less than arm's length. These are items that are by such classification plainly marked as suspect and as proper items for investigation and purging. Enormous sums of money have been extorted from the investors of Pennsylvania by means of write-ups that have flooded the market with securities based upon nothing more substantial than wind, water, and graft.

Operations of the professional promoters of write-ups of public utilities have been a scandal in this country. Pennsylvania has been a happy hunting-ground for these operators. They have seduced directors of utility companies and public officials to whom the duty of safeguarding investors and ratepayers has been committed.

After the last war when a "return to normalcy" was the vogue, these write-ups were the leading factor in the orgy of speculation which resulted in the financial crash and the disastrous depression of 1929 and the following years.

As one precaution against the recurrence of that disaster, the committee that devised the Uniform System of Accounts set up Account 107 as a red flag warning both investors and the general public of what would be set forth under that classification. I quote from the official classification of Account 107:

"Write-ups of electric plant prior to the effective date of this system of accounts shall be included herein.

"Note—the provision of this account shall not be construed as approving or authorizing the recording of appreciation of electric plant."

The item of $66,788.81 is most certainly a write-up. It is most certainly an "appreciation of electric plant." It belongs in Account 107 and nowhere else.

The Commission, by its action in this matter, virtually abolishes Account 107 so far as Pennsylvania is concerned. Write-ups are to be placed in the comparatively harmless milk and water account known as 100.5.

The Federal Power Commission and the Securities and Exchange Commission have ruled in direct contradiction to the Pennsylvania Commission in this matter. I find in the current issue of *"The Public Utilities Fortnightly"* the decision of the Federal Power Commission, Re Pacific Power

& Light Co. 46 PUR(NS) 131. On page 138 I find this language:

"Cost, not value, is the fundamental basis of accounting for public utility plant, as well as for plant of other enterprises. Our System of Accounts like all accounting systems prescribed by regulatory agencies, is grounded firmly in the cost principle.

"Our views on that subject are unchanged.

"We find, therefore, that the amount of $4,121,981.41 is a write-up of electric plant and is properly classifiable in Account 107, Electric Plant Adjustments.

"Disposition of the Write-up Classifiable in Account 107.

"(4) We have determined that the excess of $4,121,981.41 does not represent a valid cost of property and is properly classifiable in Account 107. The provisions of Account 107 require the amounts recorded therein to be disposed of as we may approve or direct. We hold that, in accordance with sound principles of accounting, the amounts should be expunged immediately."

The Securities and Exchange Commission of the Federal government has taken an even stronger position in considering write-ups.

Commenting upon its decision in "Re Public Service Co. of Indiana (1942) Holding Company Act Release No. 3521," the Commission said:

"Our position in regard to the proper disposition and accounting treatment of 'write-ups' is well-known. Such items are merely 'fictitious or paper increments' and proper corporate accounting, quite apart from the requirements of regulatory authorities, requires their immediate elimination. See American Accounting Association, Accounting Principles Underlying Corporate Financial Statements (1941); American Institute of Accountants, Accounting Research Bulletin No. 5 (1940); American Teleph. & Teleg. Co. v. United States (1936) 299 US 232, 240, 81 L ed 142, 16 PUR(NS) 225, 57 S Ct 170. In the field of public utilities where monopolistic conditions prevail, the necessity of protecting investors and consumers from the evils of inflationary manipulations of asset accounts underscores the requirements of ordinary corporate accounting. Consumers are defrauded when they are forced to pay a return on assets arbitrarily written skyward, and investors, who receive in return for their savings securities based upon watered accounts and not tangible physical assets, inevitably suffer heavy disillusionment.

"It has been our policy to require that such 'write-ups' be immediately written off the books by charges to earned surplus. See Re Georgia Power Co. (1941) Holding Company Act Release No. 2586, 8 SEC 656; Re Gulf Power Co. (1941) Holding Company Act Release No. 3018; Re Mississippi Power Co. (1941) Holding Company Act Release No. 3019, 44 PUR(NS) 465; Re Alabama Power Co. (1941) Holding Company Act Release No. 3227. See also Re St. Croix Falls Minnesota Improv. Co. and St. Croix Falls Wisconsin Improv. Co. (Fed PC 1942) Opinion No. 72, 43 PUR(NS) 1."

It is important that Pennsylvania shall not return to the days when the watering of stocks was a commonplace of public utility manipulations. The

danger of a return to the inflationary practices that brought about the financial crash beginning in 1929 is real and imminent.

The decision of the majority in this Bradford Electric Case may prove to be the thin entering wedge which may bring about another epidemic of speculation. Account 107 was devised to shut off write-ups.

To abandon 107 is in my judgment a tragic mistake.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Re Capital Transit Company

[PUC No. 3342, Formal Case No. 327, Order No. 2492.]

Service, § 187 — Installation of bus lines — Postponement — War emergency.

The effective date of an order for the installation of a bus line should be postponed at the request of the Director of the Office of Defense Transportation in recognition of the seriousness of the situation with respect to supplies of equipment, rubber, and gasoline as emphasized by members of the Office of Defense Transportation and by the issuance of a directive by that office to all transit companies and taxicabs to formulate plans immediately for drastic curtailment of service under emergency conditions during war.

(HANKIN, Commissioner, dissents.)

[January 28, 1943.]

REQUEST *by Director of Office of Defense Transportation for postponement of order to install bus line; postponement ordered.*

By the COMMISSION: Under date of January 23, 1943, a letter was addressed to this Commission by Mr. Joseph B. Eastman, Director of the Office of Defense Transportation, to the effect that the installation of the proposed Nebraska Avenue-Loughboro Road bus line as contemplated in Order No. 2450 would be inconsistent with the policies of the Office of Defense Transportation. The request was made by Mr. Eastman that this Commission gives serious consideration to rescinding Order No. 2450 or at least to postponing its effective date for a period of sixty days.

Following the receipt of this letter, the Commissioners had an interview with Mr. Eastman and with members of his staff, at which the Commissioners discussed the events leading up to the promulgation of this order and expressed their view that in the general approach to the problem of conservation of equipment, rubber, and gasoline their principal objective was to comply fully with the policies enunciated by the Office of Defense Transportation.

During the discussions, the seriousness of the situation with respect to supplies of equipment, rubber, and gasoline was emphasized by the members of the Office of Defense Transportation who participated in the conferences. While the Commission is still of the opinion that the installation of this line is necessary in order to provide adequate transportation facilities, it is bound to recognize the existing critical situation, which has been emphasized through the issuance lately of a directive from the Office of Defense Transportation to all transit companies and taxicabs to formulate plans immediately for drastic curtailment of service under emergency conditions. The Commission, therefore, feels that the request of the Director of the Office of Defense Transportation for a postponement of sixty days of the effective date of Order No. 2450 is a reasonable one and should be granted.

It is *ordered:* That the effective date of Order No. 2450 be, and it is hereby, postponed to March 31, 1943.

By the Commission (Chairman Flanagan and Commissioner Kutz). Commissioner Hankin dissents for the reasons given in a separate opinion.

Commissioner HANKIN, dissenting: It is not a pleasant task to write a dissenting opinion. It is a task undertaken only because of the dictates of one's sense of duty. It is still harder to dissent when the Commission is unanimous on the substance of the matter in controversy, and when the majority feels compelled to arrive at a conclusion contrary to its own judgment. It is hardest of all to dissent from compliance with a request made by the pioneer in the regulation of transportation in the public interest —Joseph B. Eastman, the Director of Defense Transportation. With all due deference to him, I feel I must set forth my dissenting views.

On December 11, 1942, this Commission ordered the establishment of a bus line to operate between Tenley circle and MacArthur boulevard over Nebraska avenue and Loughboro road It was a step toward the establishment of crosstown transportation over Military road and by connections with this line from the Chevy Chase area to MacArthur boulevard. The order was issued after extensive hearings, and, after a thorough analysis of the needs of the people of the District of Columbia for such transportation. The order was issued, also, with a view of relieving the congestion which now exists on the H–2 crosstown line, and thus save some of the busses thereon from excessive wear and tear.

After this line was established, numerous representations were made by the Regional Committee of the Office of Defense Transportation to our chief engineer to the effect that this line was not necessary in view of the present conditions; that it was not in conformity with the policy of the Office of the Defense Transportation to save gasoline, rubber, and equipment; and that, therefore, the order of December 11, 1942, should be revoked. The Commission declined to take such step for the reasons more fully developed below. Finally, on January 23, 1943, the Director of Defense Transportation addressed a letter to the Chairman of this Commission, requesting the recision of the order, or its postponement for a period of sixty days.

In his letter the Director of Defense Transportation intimated that this Commission was not following the policies of the Office of Defense Transportation, at least to the extent of this step taken. Neither in the letter, nor in the conferences which followed, did it appear what might be accomplished by the postponement of the order for a period of sixty days.

Two members of the Commission conferred with the Director of Defense Transportation and two of his assistants. It appeared that the difference in policy, if any, revolved about the fundamental question: What is the rôle that local Commissions should play in the furtherance of the policies of the Office of Defense Transportation, consistently with the duties and obligations to the public. Specifically, must this Commission save bus miles only by withdrawing service from the public, or may it effect savings by rearrangement of service, adding bus transportation in one place and subtracting it from another place, so long as the result is the same or even a greater saving in bus miles?

Another conference was held by the entire Commission with the Chief of Local Transport, at which the matter was discussed at length. No conclusions were reached at these conferences. To the question of the Chairman of this Commission whether the Office of Defense Transportation would undertake to nullify our order, if we declined to rescind it or to postpone it, the Chief of Local Transport made no definite response. The entire Commission is unanimously of the view that the bus line should go into operation, but the majority decided to comply with the request of the Director of Defense Transportation.

Ever since the establishment of the Office of Defense Transportation and the promulgation of its general plan of conserving rubber, gasoline, and equipment, this Commission has adopted the plan as its own. In this we had a dual obligation: To aid in the war effort, and to save the transportation facilities to meet our future transportation needs. As early as May 2, 1942, this Commission, together with representatives of the Maryland and Virginia Commissions, had a conference with the Chief of Local Transport of the Office of Defense Transportation. At this conference it was agreed that these Commissions would adopt the policies of the Office of Defense Transportation, but that the applications of these policies would be left to the local Commissioners. The main reason for this arrangement was that conservation of bus miles is a matter which must be determined upon the facts inherent in local conditions, and there are ways of conserving bus miles other than by merely diminishing service. Bus miles can be saved by a rearrangement of the service, or by introduction of a selective express bus operation which would eliminate wastage in carrying capacity,[1] and at times even by the establishment of additional lines. An apt illustration of the last method is the establishment of the H–2 crosstown line. Before the establishment of this line persons were obliged to ride over long distances to destinations which they can now reach by traveling less than one-half or less than one-fourth of the distance. While

[1] See opinion in Formal Case No. 325, in Re 16th Street Bus Operation, Nov. 5, 1942.

the travel of an occasional passenger over a short distance, rather than a long distance, will not result in any difference in bus miles, quite a different situation is presented when over 20,000 persons per day engage in such travel in crowded busses. True, the number of bus miles thus saved is not susceptible of exact ascertainment, yet it is evident that the saving in bus miles on account of the establishment of the H-2 crosstown line must be very substantial.

Pursuant to the policy of conservation, this Commission has already curtailed as much as 1,500,000 bus miles per year. This saving does not take into consideration that the bus passengers increased by 65 per cent for the period of January through November 1942, as compared with January through November, 1941, and that the number of bus miles has not increased in the same proportion. Taking into consideration the number of passengers carried, the curtailment of 1,500,000 bus miles per year is equivalent to 6,279,000 bus miles per year. In other words, in the interest of conservation we have deprived our people of over 20 per cent of bus service. This is not all. Only a few days ago we have ordered a saving of 550,000 additional miles, and were contemplating further changes which would result in additional and very substantial changes.

In view of these painful accomplishments, it cannot be intimated that this Commission is not complying with the general plan of the Office of Defense Transportation. It is said, however, that the establishment of the Loughboro road bus line is in conflict with the *policy* that no new extensions be had except to war plants. I think that this is stretching the term "policy" to an unwarranted extent. While the various standards prescribed by the Office of Defense Transportation are often spoken of as "policies," there was but one policy announced, and that is to *conserve* gasoline and rubber. The curtailment of bus service, the shifting of passengers from busses to rail lines, the avoidance of establishing new lines are all applications of this policy. The establishment of new lines for war workers appears as an exception to the methods to be pursued in the promulgation of the policy of conservation. The question, therefore, resolves itself into one of application.

In the hearings on the establishment of a crosstown line over Military road and of the Loughboro road line, it became evident that the bus lines would furnish transportation to such important defense plants as the War Mapping Service at Dalecarlia, the Bureau of Standards, Walter Reed Hospital, the Naval Medical Center, and other places where war work is being carried on. It would, therefore, appear that the establishment of this line would come within the exception in the applications of the O.D.T. policy. In other words, that these lines could, consistently with the policy, be established, despite the fact that it would mean adding bus miles. Nevertheless, it has been the policy of this Commission to avoid the establishment of even such lines, unless this could be accomplished simultaneously with other changes, so that the net result would be a saving, rather than an increase, in bus miles.

Accordingly, on December 11,

1942, we issued Order No. 2450, establishing the Loughboro road line, but simultaneously therewith we issued Orders Nos. 2448 and 2449, modifying the service over the Woodley road bus line and over the Glover Park—Foxhall village—Trinidad bus line, so that the net result was a saving of 86,580 miles per year. We have delayed in the establishment of the Military road crosstown bus line, because we felt it necessary to establish such line only with a simultaneous rearrangement and curtailment of other service so as to increase, but preferably to diminish, the bus miles. We have recently worked out a plan whereby another stage in this crosstown transportation could be accomplished with a net saving of 1,500 miles per year, plus whatever mileage might be saved through relieving the congestion on the H–2 cross-town line.

It seems to me that we cannot do otherwise than to rearrange bus service in the process of diminishing on the number of bus miles, and that the request of the Director of Defense Transportation, that we save bus miles without giving additional service where the transportation service is inadequate, goes contrary to our fundamental obligations under the statute under which we operate. We cannot surrender our functions and duties in this manner.

At the conference between the Virginia and Maryland and District of Columbia Commissions and the Chief of Local Transport of the Office of Defense Transportation, already referred to, there was another reason stated why the applications of the policy of conservation should be left to the local Commissions rather than be pursued by both Federal and local agencies. With this dual setup of regulation, one must avoid conflict; one must especially avoid situations where the carriers might play one agency against the other. It is interesting to note that in all instances where a controversy has arisen either between the Commission or the public on the one hand, and the Capital Transit Company on the other, the Regional Committee of the Office of Defense Transportation has appeared to urge the viewpoint of the Capital Transit Company.

1. The establishment of the Loughboro road line was opposed by the Capital Transit Company, hence by the Regional Committee, and now by the Office of Defense Transportation itself.

2. In connection with the proceedings for the establishment of express bus service on 16th street, it was contemplated to discontinue that part of the S–2 bus line which runs between Georgia avenue and 16th street, the purpose being to advance the policy of conservation by shifting a large number of passengers to the Georgia avenue car line. The Capital Transit Company was opposed to this change; the executive secretary of the Regional Committee appeared at the hearing and likewise opposed this change. Asked whether that would be in conformity with the policy of the Office of Defense Transportation, and why he is opposed to shifting these passengers from busses to rail lines, he answered:

"Of course, I don't know what the habits are of those people there. I should think they live in—those are nice places along Alaska avenue. I

don't know what kind of walkers they make, I am sure. Their inclination, I imagine, would be to — well, I wouldn't like to say." (Record, Formal Case No. 325, p. 296.)

But quite a different attitude was taken by the same representative of the Regional Committee when he testified in connection with the Takoma, Petworth, and Chillum Bus Lines (see Formal Case No. 328, pp. 65 through 78), where the shifting of others to the Georgia avenue car line was urged by the Transit Company.

3. The Capital Transit Company opposed the establishment of a selective express bus system on 16th street, and the Regional Committee likewise opposed it, although for what reasons it is very difficult to see, especially since the selective express bus system was designed to save bus miles, also wear and tear of equipment. Since the establishment of the express bus system on 16th street, we have received reports on the loadings of the express busses, as compared with the loadings on the local busses. The former show a much greater percenatge of loading, except for two busses operating in the evening, which evidently are scheduled at the wrong time, and which should be moved to another time of operation when the loadings will be much greater, and if that doesn't work, those two busses should be taken off the express bus service.

4. This Commission has been greatly concerned with transportation to the Pentagon and Navy Annex buildings. A plan has been worked out by one of the Engineers of the Army, in collaboration with our engineers, whereby express bus service could be instituted between various areas in the District of Columbia and the Pentagon and Navy Annex buildings. This, it was calculated, would reduce the time of travel and increase the efficiency of the war workers. The Capital Transit Company opposed it, and so did the Regional Committee. It is entirely problematical whether a selective express bus service of this character would involve additional bus miles. Still, if savings are to be made, they should be made at the expense of persons working in private enterprises, or in the civilian departments, or where direct street car service is available, and not at the expense of the most important of the war plants, the Pentagon building and Navy Annex. Even this was opposed by the Regional Committee.

It is as I feared last May. If the Capital Transit Company opposes any plan looking toward the improvement of service, it now has an appeal to the Office of Defense Transportation, for any improvement of service, even if it saves bus miles, can be shown to be an increase in bus miles at some particular place. We may soon find ourselves in the position where we can regulate only in the manner in which the Capital Transit Company or the Office of Defense Transportation want us to regulate.

In the curtailment of bus miles, we cannot be guided entirely by the wishes of the Capital Transit Company. Our primary obligation is to serve the people of the District of Columbia. We cannot favor one section of the city as against another. When we embark upon a program of conservation, we cannot merely diminish bus miles. We must at all times see to it that

whatever transportation is available due to the exigencies of war, the facilities will be shared as nearly as possible by all the people.

With all due deference to the Director of Defense Transportation, I do not think we should revoke or even suspend Order No. 2450. Otherwise, we should be surrendering our obligations, and, what is worse, we should leave the people without appeal to us, as the agency constituted by law, whenever the transportation service fails to meet their needs.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Village of North Freedom

[2-U-1872.]

Rates, § 313 — Charge for additional users — Water — Flat rates.
A water utility should be permitted to make a charge for each additional customer supplied through one service where customers are supplied on an unmetered basis.

Rates, § 313 — Unit of service — Customer — Definition.
Definition of "customer" or "unit of service" for the purpose of applying a charge for additional users of water, p. 186.

[February 8, 1943.]

APPLICATION *for authority to make a charge for additional customers supplied through single services; granted.*

By the COMMISSION: Application was filed October 13, 1942, by the village of North Freedom, Saulk county, as a public water utility, for authority to increase its rates for water service by adding to the existing schedules a rate of 75 cents per quarter for each additional customer supplied through one service.

Notice of the proposed increase in rates was given to the Federal Price Administrator on January 4, 1943, which notice included a consent to his intervention in this proceeding. Neither the administrator nor the Office of Price Administration has so intervened or made any objection to the proposed increase.

APPEARANCES: Max B. Pawlisch, Village President, and Edyn B. Aspenwall, Village Clerk, for the village of North Freedom; P. A. Reynolds, Rates and Research Department, of the Commission staff.

From the application filed and from the record it appears there now exists

in North Freedom a large number of multiple dwelling units with several customers served through single connections. Further, there are others that have no water in their apartments but have access to fixtures from which they carry water for their own uses. This situation has arisen as a result of the recent influx of war industry workers.

Application is made to add to the existing schedules a rate of 75 cents per quarter for each additional customer supplied through one service.

The line of demarcation between various groups of ratepayers cannot always be clearly defined. In many water utility cases that have been before us, we have established what have been considered reasonable rules, one of which is the definition of a customer or unit of service. A check of the data and information before us in this case will indicate whether the standard definition is one that should be adopted.

From the record it appears there are about fifty-eight users who may be classified, depending upon the definition adopted, either as separate customers or as additional takers and subject to the seventy-five cents per quarter proposed. It is estimated this charge will add between $75 and $80 to the annual revenue and will have but slight effect on the return earned by the utility.

All customers are supplied on an unmetered basis. Attempts by the utility to meter service have been abandoned principally on account of sand in the mains. As a general rule, the supplying of water on a flat rate basis results in a larger pumpage per customer due to the lack of check on the wastage of water. Applicant now contends that through the influx of new families because of emergency war plant work available, it has already pumped in nine months more water than has been pumped in any whole year previous. There is no sewer system so that it is not easy to dispose of wasted water; consequently it appears that the increased pumpage was used.

No one has the right to the service of a water utility until he has made his contribution towards the cost of operating and maintaining a plant ready at all times to serve its customers. The customer who supplies his neighbor through his service connection deprives the utility of its right to collect the just share of the capacity and demand expenses from those who procure their water habitually from the service furnished to their neighbors. We have held in so many cases that a reasonable charge should be applied to those habitually resorting to the services of neighbors or to those takers considered as additional customers on a service line that it appears reasonable to approve the application in this case. After a careful review and analysis of the record we believe that reasonable and equitable rules and rates as outlined below can be established to supplement the existing schedule.

(A) A customer or unit of service shall consist of any aggregation of space or area occupied for a distinct purpose such as a residence, an apartment, a suite of rooms, a flat, store, office, tavern, factory, etc., which is equipped with one or more fixtures for rendering service separate and distinct from other users.

(B) Suites of rooms in houses, or apartments, having one, two, or more rooms and with toilet facilities, but without kitchen facilities for cooking, are classed as rooming houses. Of premises containing such suites of rooms the property owner shall be billed for the fixtures in use in accordance with the filed flat rates.

(C) Premises containing more than one unit of service as defined in paragraph (A) shall have each unit of service regarded as one consumer and the surcharge of 75 cents per quarter for additional consumers on the service, shall be assessed accordingly.

(D) Where a water user, as defined in paragraph (A) but having no fixtures, is so situated that he must carry all or the larger part of his entire requirements from fixtures supplying the property owner or other takers, or he habitually turns to such fixtures for his own uses, the property owner permitting such use shall pay 75 cents per quarter for each taker.

The Commission finds:

1. That the existing schedule of rates of the village of North Freedom, as a water public utility, in so far as modified by the order herein, is unreasonable and discriminatory in that certain customers are receiving free service.

2. That the rate and rules as hereinafter ordered and prescribed for service to additional customers on a single service are just and reasonable.

ORDER

It is therefore *ordered:*

That the village of North Freedom, as a public water utility, be and hereby is authorized to apply a rate of 75 cents per quarter for each additional customer supplied through one service under the rules set forth in the opinion herein.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION

Federation of Citizens' Associations et al.

v.

Capital Transit Company

[Formal Case No. 309, Order No. 2484.]

Discrimination, § 95 — Bus and street car fares — Sale of tokens.

1. The sale of six tokens for 50 cents rather than the sale of three tokens for 25 cents for transportation on busses and street cars does not constitute an unjust or unreasonable discrimination, p. 188.

Rates, § 319.1 — Bus and street car fares — Sale of tokens.

2. The sale of three tokens for 25 cents for transportation on busses and

street cars, where six tokens for 50 cents were being sold, was ordered for a trial period upon a finding that this was a convenient method of selling tokens and that it might facilitate individual transactions, p. 189.

(HANKIN, Commissioner, concurs in separate opinion.)

[January 22, 1943.]

APPLICATION *for order requiring sale of three tokens for 25 cents instead of six tokens for 50 cents; upon rehearing application granted. For earlier decision limited to discrimination question, see (1942) 46 PUR(NS) 232.*

By the COMMISSION: This matter was heard on application of the Federation of Citizens' Associations and the Federation of Civic Associations that the Commission order the sale by the Capital Transit Company of three tokens for 25 cents, instead of six for 50 cents as provided in Order No. 1634, dated November 3, 1937, 21 PUR(NS) 26. When this matter came on for hearing in January, 1942, the Commission limited the proceedings to the single question whether the sale of six tokens for 50 cents rather than three for 25 cents constituted an unjust and unreasonable discrimination.

The testimony in that proceeding was to the effect that there are many people in the District of Columbia in the low-income group and that the purchase of six tokens for 50 cents constituted a hardship upon them. Upon the record made in that proceeding the Commission found that the applicants had failed to show unjust or unreasonable discrimination, and the Commission, by Order No. 2278, 46 PUR(NS) 232, dismissed the application without prejudice.

Upon the petition of the Ft. Davis Citizens' Association to reconsider Order No. 2278, the Commission reopened the proceedings by Order No. 2454, Dec. 18, 1942, and set it for further hearing on January 12, 1943. The prehearing conference limited the proceeding to the sole question whether or not the sale of six tokens for 50 cents rather than three for 25 cents constituted an unjust and undue discrimination.

[1] The petitioners cite no authority, and none has come to the attention of the Commission, in which it has ever been held that the lack of a coin of a specific amount, or the inability to pay an established rate, constitutes discrimination. The established rates, including the token rate, apply alike to all passengers, and the same services are afforded to all passengers, whether they use a weekly pass or a token or pay a cash fare. In the reopened proceedings, conflicting evidence was presented both as to the hardship imposed upon people in the lower-income group and as to the convenience to the public to be afforded by the sale of three tokens for 25 cents as against six tokens for 50 cents and vice versa. The weight of evidence, however, will support a finding by the Commission that the sale of six tokens for 50 cents rather than three tokens for 25 cents does not constitute dis-

crimination, and the Commission so finds.

[2] The Commission finds from the testimony of record that the sale of three tokens for 25 cents is a convenient method of selling tokens and that it may facilitate individual transactions. It is therefore the opinion of the Commission that an order putting into effect the sale of three tokens for 25 cents for a trial period is reasonable and in the public interest.

It is *ordered:*

Section 1. That the Capital Transit Company be, and it is hereby, authorized and directed to sell tokens at the rate of three for 25 cents until further order of this Commission.

Section 2. That the provisions of § 1 of Order No. 1634, in so far as they are inconsistent with § 1 hereof, be suspended.

Section 3. That this order take effect on or before 12:01 A. M., January 31, 1943.

HANKIN, Commissioner, concurring: I concur in the result reached, but for a different reason, namely, that the sale of six tokens for 50 cents results in unjust discrimination which will be diminished through the sale of three tokens for 25 cents.

By Order No. 2278 (dated May 12, 1942, but issued November 20, 1942, 46 PUR(NS) 232) this Commission denied the application of the Federation of Citizens' Associations and the Federation of Civic Associations for a change in the sale of tokens from six for 50 cents, as provided in Order No. 1634, dated November 3, 1937, 21 PUR(NS) 26, to three tokens for 25 cents. The application was denied without prejudice.

In my dissent from that order, I pointed out that the Commission had erred in the following particulars:

(1) In failing to make basic findings of fact supported by the evidence in the record.

(2) In holding that the evidence in the record does not justify a finding that the sale of six tokens for 50 cents constitutes an unjust or unreasonable discrimination.

(3) In failing to find and to hold that the existing rates charged by the Capital Transit Company are discriminatory.

(4) In failing to find that large numbers of persons in low income groups do not have 50 cents at any one time available for payment for transportation, though they may have 25 cents at such times for such purpose.

(5) In failing to find that the discrimination in the existing rates works a hardship on persons in low income groups and are therefore unjustly discriminatory.

(6) In failing to find that there is no justification from the operating or financial standpoint of the Capital Transit Company for refusal to sell tokens at the rate of three for 25 cents.

(7) In failing to hold that the Capital Transit Company has failed to show that the relief sought by the applicants would result in a substantial diminution in the company's gross revenues.

(8) In failing to hold that the diminution, if any, of the company's gross revenue has no relevancy in this proceeding.

(9) In denying the application.

An application for reconsideration was filed by the Fort Davis Citizens'

Association, which was granted on December 18, 1942, and the matter was set for hearing on January 12, 1943.

At a prehearing conference held on December 30, 1942, and at the hearing on January 12, 1943, counsel for the petitioners and for the Capital Transit Company agreed that the evidence relating to the effect of the proposed change on the finances, revenues, or earnings of the company was irrelevant in this proceeding. The evidence introduced by the company with reference to the alleged diminution in revenue, should the application be granted, must, therefore, be disregarded. For the purposes of this case, we must proceed on the assumption that the company is not operating at less than a fair return, and that the sale of three tokens for 25 cents will not result in compelling the company to operate at less than a fair return.[1]

This leaves for consideration items (1) through (5), above stated, also the question whether the change in the sale of tokens would be justified from an operating, as distinguished from the financial, standpoint of the company, i. e., whether the proposed change would result in more efficient operation of the street cars and busses. In my former opinion I pointed out that the evidence in this respect fell far short of proof. The additional evidence adduced at the rehearing has not supplied the necessary elements of fact to arrive at the conclusion that the proposed change would result either in more efficient or less efficient transportation.

Error No. 1, above stated, raises only a question of law. A mere glance at Order No. 2278, *supra,* will demonstrate that no findings of fact based upon the evidence had been made, which would support the order.

Error No. 2 raises a question of law as to the sufficiency of the evidence to warrant a finding as to discrimination.

[1] This is by no means a violent assumption. It is a matter of common knowledge that due to war conditions the amount of transportation in the District of Columbia has increased tremendously; that the amount of equipment used and useful to meet this increased demand has not increased to the same extent, nor have the operating expenses increased in the same proportion. In my dissent from Order No. 2468, issued on January 5, 1943, 47 PUR(NS) 41, I pointed out that upon a computation made by the Chairman of this Commission, the company's rate of return for the twelve months ended September 30, 1942, was 6.4 per cent, but that this was a ratio between the net operating revenues, as reflected on the company's books, and an estimated rate base which consisted of $24,000,000, found by the Commission to be the "fair value" of the property as of December 31, 1935, plus net additions since that time, plus materials and supplies, without any deductions for depreciation of that property since January 1, 1936. I also pointed out that if the property were, at the present time, treated as being in a 51 per cent condition, as represented by the Commission's chief engineer, this 6.4 per cent would actually be 9.79 per cent. Upon computations I had made, taking as the base the estimated original cost of the property, less the depreciation reserve, but applying the operating revenues and expenses as per the company's books, the rate of return for the same period would be 7.83 per cent; and if the property were regarded as being in a 51 per cent condition, the rate of return would actually be 10.14 per cent. I further pointed out that if we were to omit from operating expenses some few of the larger items which should not enter into the computation of the rate of return, then the present rate of return is 12.7 per cent, but that if we regarded the property as being in a 51 per cent condition, the rate would be 16.51 per cent. In these circumstances, one does not have to burn the midnight oil to arrive at the conclusion that any change in revenue due to the sale of tokens at the rate of three for 25 cents, instead of six for 50 cents, would not cause the Capital Transit Company to operate at an unreasonably low or confiscatory rate.

Errors Nos. 3, 4, and 5 resolve themselves into these two questions of fact: (1) Is there a difference in the payment of six tokens for 50 cents, as distinguished from three tokens for 25 cents; and (2) Does this difference operate unfairly or unjustly on any classes of passengers in the District of Columbia?

In addition to the evidence introduced at the original hearing, testimony on these points was presented at the rehearing. Representatives of various organizations and persons familiar with large numbers of people in the low income groups have testified that there is a substantial difference between requiring a person to spend 50 cents at one time for transportation and requiring him to pay 25 cents for transportation at any one time, in order to avail himself of the $8\frac{1}{3}$ cents rate, rather than pay 10 cents for a single ride. This, therefore, establishes that there is a difference. The same witnesses also testified that concurrently with this difference there is a hardship which is imposed upon persons who are in the lower income brackets, because whenever they do not have as much as 50 cents available for transportation, they cannot avail themselves of the privilege of purchasing tokens, and must pay 20 per cent more for a single ride.

These facts were not denied by the Capital Transit Company. It introduced no evidence whatever on this question. Its position is based on the argument that whatever may be the differences in the effect on the passengers, whatever may be the hardship incident to the requirement of sales of six tokens for 50 cents, rather than three tokens for 25 cents, the difference is applicable equally to all persons whether they are rich or poor. It seems to me that this is equality in form, but not in substance. The evidence showed that while persons in the higher income brackets may at times be short of change and may find themselves obligated to pay 10 cents for a single ride, rather than purchase tokens, this is an infrequent occurrence, and the result is only a slight inconvenience. With persons of the lower income brackets, the experience of being without as much as 50 cents available for transportation is by far more frequent, and the effect of paying 10 cents, rather than $8\frac{1}{3}$ cents, is not a mere slight inconvenience but is an actual hardship.

Is this a discrimination? To discriminate means "to make a difference or distinction" (Webster's New International Dictionary.) A difference or distinction is made when a person is required to pay 10 cents, rather than $8\frac{1}{3}$ cents, per ride. A distinction is thus set up. Whether it is based upon the amount of money presented at one time, or because of any other reason, does not remove the fact that there is a difference or distinction. Discrimination also means "a distinction, as in treatment; esp., an unfair or injurious distinction" (Webster's New International Dictionary). The evidence shows that the difference or distinction inherent in the cash fare and the sale of six tokens for 50 cents does result in a distinction in treatment which is unfair or injurious to large classes of persons.

It would serve no useful purpose to make a speculative analysis of the majority opinion in an effort to determine how the Commission finds upon "the weight of evidence" (Sic!) that there is no discrimination, or what "conflicting evidence" there was, when in truth and in fact the evidence overwhelmingly showed discrimination and hardship, supplemented by evidence of one witness who said that he had not heard of any complaints and by evidence of another witness, apparently by no means of low income, who echoed the suggestion of the Capital Transit Company that the poor people should save from their earnings enough to pay the company 50 cents at a time. The evidence also showed that it was much easier for a rich man to tell a poor man to save, than it is for the latter to do so.

It would also serve no useful purpose at this time to speculate what the Commission means by ordering this change "for a trial period." If all it means is that this order shall be in effect until further order of the Commission, the answer is that all orders of the Commission are subject to further orders.

However, as the matter stands, the Capital Transit Company is ordered to sell tokens at the rate of three for 25 cents, and for this reason I concur in the action of the Commission, which incidentally removes the discriminatory effect of the rate structure to this extent.

YOU CAN LAUGH AT "THEM GREMLINS"* IF YOU HAVE KUHLMAN C.S.P. TRANSFORMERS ON THE JOB . . .

Maybe it's true that "them gremlins" try to make trouble. But with Kuhlman C.S.P. Transformers you need have no fear of shutdowns due to lightning, secondary short circuits, line outages, or overloads.

In a Kuhlman C.S.P. a hooded signal lamp indicates when the transformer is operating above normal temperature. Extra-large porcelain housings for external de-ion gaps provide increased creepage distances. Resistors are permanently grounded to eliminate shock hazard. Gaps to resistors and ground are pre-adjusted to insure permanent surge co-ordination. External de-ion gaps and resistors are assembled in one unit to be easily demountable without disturbing adjustment.

If you do not already have the complete catalog No. 441 on Kuhlman C.S.P. Transformers, write for your copy today.

*"Them gremlins" is correct according to Gremlinologists

Kuhlman ELECTRIC COMPANY BAY CITY MICHIGAN


LINE OUTAGES
SECONDARY SHORT CIRCUITS
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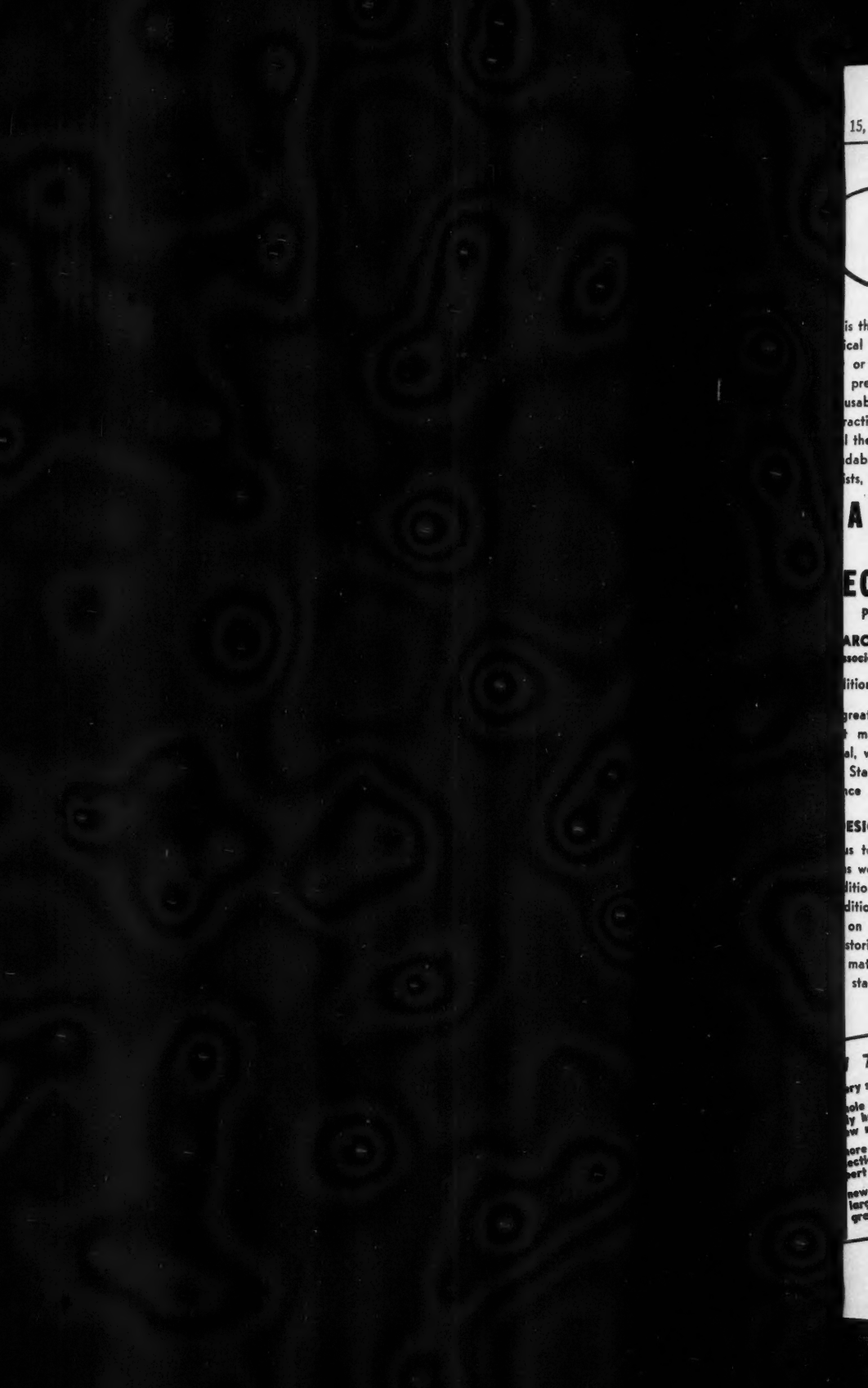


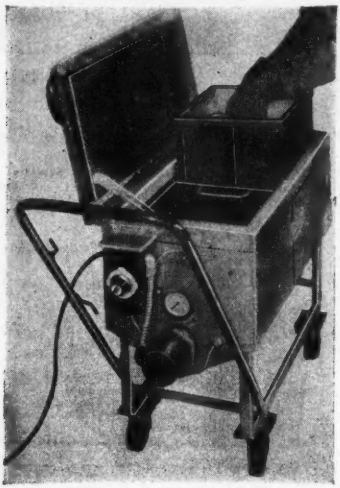
Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

Equipment Notes

Metal Cleaning Tank

For fast, economical cleaning and degreasing of metal parts and products Aeroil Burner Company, Inc., West New York, N. J., offers the Dipmaster, Jr., a portable, insulated, electrically heated dipping tank. The tank has a capacity of 15 gallons of solution. The heating element is located inside on the bottom of the tank where it is completely submerged. It can be removed whenever any cold solutions are used or the bottom of the tank is to be cleaned. Average heating time from a cold start to boiling point (212°F.) is only 1¼ hours.



The Dipmaster, Jr.

The unit is mounted on casters and is ready for instant operation by simply plugging it in on 110 or 220 volt ac or dc.

Standard equipment furnished with the Dipmaster, Jr. includes two dipping baskets, in which the parts are placed, each measuring 11¾ in. long, 11¾ in. wide, and 8 in. deep; a bi-metal type thermometer registering a temperature range of 100-600° F. and a thermostatic control of the rigid, shock-proof type, equipped with a dial and knob to shut off the heating element manually and to maintain automatically any desired temperature between 100-550° F.; also a draw-off cock for emptying the tank.

G-E Announces New Line of Evaporative Condensers and Evaporative Coolers

By redesigning the General Electric evaporative condenser line to use a minimum of critical materials, and to increase the adaptability of the units to essential wartime industrial applications, engineers of the company's air conditioning and commercial refrigeration divisions have created a new line of evaporative coolers and condensers.

Consisting of various combinations of two basic assemblies—the spray cooler assembly and the fan assembly—the new line is a radical departure from previous design. For evaporative condenser models, an externally mounted refrigerant receiver is supplied.

Case Reveals Any Attempt to Tamper with Extinguisher

To reveal instantly any attempt to tamper with fire extinguishers, American-LaFrance-Foamite Corporation, Elmira, N. Y., have introduced a new inexpensive extinguisher case, known as the Tampless Case.

Constructed of non-critical, tough cardboard stock, it safely houses the extinguisher from the reach of unauthorized persons, and yet allows of instant removal for legitimate use One quick pull on a sealed string breaks through a gummed paper sealing strip and permits the Tampless Case to unfold. The extinguisher can immediately be lifted from its bracket.

The Tampless Case can be reused. Simply reservice extinguisher, replace, fold case, and reseal.

Information on the front of each Tampless Case shows the classes of fire on which extinguishers should be used, and the kinds of fires on which they should not be used. Clear, concise instructions also show how each extinguisher should be operated.

New Glass Thermometer Manufactured

An entirely new thermometer is announced by the American Schaeffer & Budenberg instrument division of Manning, Maxwell & Moore, Inc., Bridgeport, Conn. Although originally designed as a means of conserving the critical copper used in cast bronze cases, it has resulted in a significant advance in the manufacture of industrial thermometers, according to the manufacturer.

It is claimed that the new thermometer incorporates all the major design improvements which had been accumulated over the years. The scales and tubes are located in a manner which produces greatest readability, and a new method of making the scale has been developed

Equipment Notes (Cont'd)

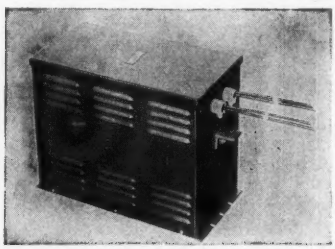
which produces a more legible and better looking scale than has ever been available before. The scale is black with yellow figures while the tube is red-reading mercury.

Further details in regard to this improved pressed-steel case thermometer may be had by writing direct to the manufacturer.

New Voltage Stabilizer

General Electric has announced a new voltage stabilizer which provides a constant output of 115 volts from circuits varying between 95 and 130 volts.

This stabilizer is insensitive to load power factor. It is not affected by variations in load



from no load to full load or by changes in power factor from unity to 0.8 lagging. It is completely self-protecting, and will operate continuously throughout the range from open circuit to short circuit without damage.

The new stabilizer can be applied wherever close voltage regulation is requisite to good operation—in radio transmitters, electronic-tube apparatus, motion-picture sound equipment and projectors, telephone apparatus, X-ray machines, photo-cell equipment, and in the calibration of meters, instruments and relays. Ratings from 50 va to 5,000 va are available.

Publication GEA-3634 describes the new voltage stabilizer in detail.

Goggle Cleaning Station

Mine Safety Appliances Company announces a Goggle Cleaning Station which has been designed to encourage workers to wear their goggles and to keep them clean.

Designed for convenient wall mounting throughout the plant, the unit consists of a compact case equipped with Fogpruf—an efficient lens cleaning and anti-fogging agent —and optical wiping tissues.

A tap on the inverted vial sprays Fogpruf on the goggle or spectacle lens. Cleaning tissues are pulled from the opening in the top of the station, and may be discarded in a receptacle in the lower part of the case.

Further details are available in Bulletin No. CE-20, copies of which may be obtained from Mine Safety Appliances Company, Braddock, Thomas and Meade Streets, Pittsburgh, Pa.

New Portable Test Kit for Network Protectors

To test relays and electrical operation of 125/216 volt secondary network protectors, a new portable test kit has been announced by Westinghouse Electric & Mfg. Company.

The kit is designed for routine testing in the field. Variable currents and variable voltage for relay testing and mechanism operation are obtained by means of fixed resistors, a transformer, and a variable auto-transformer designed for smooth, continuous control of voltage.

New Three-Lamp Ballast for Fluorescent Lighting

The development of a 3-lamp, 40-watt, high-power-factor ballast for fluorescent lighting of war plants has been announced by the General Electric Company.

Formerly, a 3-lamp fixture—which employs three 40-watt Mazda F lamps set side by side —required two ballasts, one Tulamp 40-watt and one single-lamp, high-power-factor 40-watt.

The new ballasts are designed to operate on lighting circuits of 110-125, 199-216, 220-250, and 240-280 volts. Power factor is 90 per cent or above. Supplement No. 3 to GEA-3293D describes the new ballast in detail.

Model B WIM Identification Unit

Photographic Equipment, Inc., announces the manufacture and distribution of its new Model B WIM photographic identification unit which makes the taking of identification pictures at a moment's notice possible. The WIM unit has been designed to meet exacting requirements, the company reports, for proper photographic identification, even though trained personnel is not available to operate it. As many as 1,000 pictures can be taken in an eight-hour day. There are 24 exposures on each film roll, and loaded magazines can be inserted in the camera in seven seconds or less.

A handy fingerprint outfit can be attached to the platform behind the camera, offering quick and efficient service when fingerprints are needed. The fingerprint equipment is optional at a slight additional cost.

Pinco Announces New Bushing Line

The Porcelain Insulator Corporation of 445 Main St., Lima, New York, has announced a new line of Pinco dry type equipment bushings for use on voltages from 7.5 kilovolts up to and including 25 kilovolts. For use with currents up to 400 amperes, flanges are of high quality galvanized electric furnace annealed malleable iron. For services above 400 amperes these bushings are furnished with

bronze flanges. Other types are furnished on special request.

The bushings themselves are made up of standard Pinco high voltage, high quality porcelain. Special attention is paid to the relation between porcelain and metal at the cemented areas and to the alignment of flanges and terminals.

All joints are properly gasketed and every bushing before being approved for shipment is given a lengthy, carefully checked test under substantial pressure to make sure that it will be satisfactory for operation under either oil or gas conditions. They are furnished in either draw lead or fixed type terminals as specified by the customer, both types being carried in stock in quantities for immediate delivery.

Catalogs and Bulletins

War Standard for Protective Lighting Of Industrial Properties

To cut down the danger of theft or sabotage in industrial plants the American Standards Association has developed a War Standard for Protective Lighting of Industrial Properties.

Intended as a guide for outdoor protective lighting to those whose responsibility it is to provide for plant protection from theft and sabotage, the standard sets forth the principles involved, the chief areas to be lighted, and the minimum degree of illumination considered necessary for the detection of persons bent on theft or sabotage. It also recommends procedure to be followed in preventing sabotage to vital buildings, structures or equipments. The standard is illustrated with figures, diagrams, and tables which clarify the text and graphically show the types of lighting needed for fenced boundaries, water front boundaries, pedestrian and conveyance entrances, open yards, outdoor storage spaces, etc. In the appendix, suggestions are given for obtaining the performance prescribed in the specifications.

"Wartime Conservation"

"Wartime Conservation," a new 96-page booklet just published, contains recommendations by Westinghouse engineers for selecting, applying and using electrical equipment so as to achieve the best possible output with the greatest saving in critical materials.

The book covers up-rating of motors, thermal temperature loading of transformers, industrial network systems, line equipment and materials; and gives tips on saving and salvaging materials as practiced in the various Westinghouse plants.

In addition to pointing out ways of saving vital materials in new equipment purchased, the booklet gives many examples of how existing equipment can be made to give better service and greater output by up-rating or rebuilding with more efficient materials than originally used.

All recommendations in this new book are in line with policies suggested by the W.P.B. for the conservation of critical materials. A copy of booklet B-3206 may be secured from Department 7-N-20, Westinghouse Electric & Mfg. Co., East Pittsburgh, Pa.

Lathes

South Bend Lathe Works announces the publication of the following new catalogs:

Catalog No. 10, an 8-page file-size catalog, illustrates and describes South Bend 10 in. toolroom lathes and 10 in. quick change gear lathes in both floor leg and metal bench models. Attachments, accessories, and tools for use with these lathes are also listed.

Bulletin H4, entitled "Keep Your Lathe in Trim," contains data on lathe maintenance, lathe tests, and adjustment.

Copies of these catalogs may be obtained from South Bend Lathe Works, South Bend, Indiana.

Substations

A 36-page illustrated bulletin, Master Unit Substations (GEA-3800) has been issued by General Electric Company. The booklet describes and illustrates numerous advantages offered by this type of substation in which all parts are fully coördinated assuring dependable performance.

Three highly important savings in materials, time and money are clearly depicted. A list of some of the 50 utilities with large and small systems that are using G-E unit substations is given together with numerous illustrations of typical installations. Data covering typical specifications also are included.

Manufacturers' Notes

G-E Salvages 388,300,000 Pounds Of Scrap During 1942

General Electric plants during 1942 salvaged 388,300,000 pounds of scrap for reuse in war production, H. J. Beattie, of the company's general manufacturing organization, announces. The scrap saved would fill every car in more than 100 average freight trains.

Four-fifths of the total was shipped to steel mills, foundries, smelters and other large users of iron, steel and nonferrous metal scrap. The remainder was used in company operations.

ASHVE Appointment

The appointment of Carl H. Flink as technical secretary of the American Society of Heating and Ventilating Engineers has been announced by President M. F. Blankin. In this position Mr. Flink will be responsible for the coördination of technical committee work and assist in the compilation of codes and standards

Manufacturers' Notes (Cont'd)

and work closely with the Guide Publication Committee in the preparation of this annual reference book of the Society. He will be at the headquarters office of the Society, 51 Madison Avenue, New York.

G-E Safety Record Three Times Better Than in 1929

General Electric Company employees are working three times more safely today than in 1929, the company's previous peak production year, according to George E. Sanford, chairman of G-E's general safety committee.

Although there were more than twice as many employees, thousands of them new to industry, only four-tenths of one day per 1,000 hours worked was lost during 1942, as against one and one-fourth days in 1929. Fatalities were reduced from 10 in 1929 to five last year.

W. J. McIlvane Appointed Copperweld Vice President

S. E. Bramer, president of Copperweld Steel Company, has announced the appointment of William J. McIlvane as vice president in charge of sales and assistant to the president. Mr. McIlvane was formerly general manager of sales for Copperweld.

New Appointments at Sylvania

The appointment of Don G. Mitchell as vice president in charge of sales of Sylvania Electric Products Inc., was recently announced by Walter E. Poor, executive vice president.

This is a newly created office established to plan and direct the distribution and merchandising of all Sylvania products.

Robert H. Bishop has been named general sales manager of the lighting division with headquarters at the New York office, 500 Fifth Avenue.

Mr. Bishop, formerly Eastern sales manager of the lighting division, replaces Charles G. Pyle who recently resigned to become managing director of the National Electrical Wholesalers Association.

Stanley Divisions Win Army-Navy Award

Stanley Hand Tools and Stanley Electric Tools, divisions of The Stanley Works, New Britain, Conn., were recently presented with the Army-Navy Production Award for Excellence in War Production.

Both companies are continuing to make their regular lines of tools which have been classified as essential to the war effort, and are being supplied to all branches of the armed service.

Miniature Steel Mill Solves Plane Problem

A baby steel mill that turns out ingots weighing only 13 pounds is playing an important part in America's expanding warplane program, officials at the Westinghouse Research Laboratories disclosed recently.

Manufacturers' Notes (Cont'd)

Howard Scott and William Johnson, Westinghouse research metallurgists, used the mill to replace a thermometer manufacturer's dwindling supply of Kovar, a special metal alloy, and avert a threatened break in production of temperature gauges for bomber and fighter planes.

Materials and Time Saved In Rectifier Manufacture

By substituting welded steel pipe for copper tubing, and by eliminating fittings in favor of welding, a saving of 20,000 pounds of copper was achieved in its manufacture of power rectifiers during 1942, the General Electric Company has announced. In addition there was a reduction of some 2,500 man-hours.

Further savings in both material and time—33,200 pounds of copper and 600 man-hours—were effected by a redesign to improve the arrangement of cathode busbars of the rectifiers.

Steel was also saved. Substitution of steel plate construction for channel yielded savings of 6,400 pounds of steel and 2,700 man-hours in manufacturing rectifier bases.

R. H. Knipping Joins Power Specialty

The Power Specialty Company of Houston, Texas announces the association of R. H. Knipping with the firm as a member. He will shortly take over the San Antonio, Austin, Corpus Christi territory which he covered some years ago.

Power Specialty Company are the agents for Centrifix Corp., Cochrane Corp., Erie City Iron Works, Foster Engineering Co., Hays Corp., J. E. Lonergan Co., Lummus Co., R-S Products Corp., and Thomas C. Wilson, Inc.

GMC Scrap Collection Stepped Up 47 Per Cent

Three hundred and sixty-two freight cars and five hundred and thirty-nine trucks, loaded to the top with vital scrap materials, were shipped out of the General Motors Truck and Coach factories at Pontiac, Michigan, last year.

According to I. B. Babcock, president, the truck company broke all salvage records in 1942, collecting a total of 43,553,210 pounds of materials which were turned back into scrap processing channels. This was 47 per cent more than in any previous year.

M. M. & M. Opens Oklahoma Plant

Manning, Maxwell & Moore, Inc., manufacturers of Consolidated safety and relief valves, Ashcroft gauges, American glass and dial thermometers, American industrial instruments, and Hancock valves, with plants at Bridgeport, Conn., Boston and Muskegon, Mich., have opened a new plant in Tulsa, Oklahoma, to manufacture oil relief valves.

Hugh A. Brightwell will represent the products of their four Bridgeport divisions in the Tulsa district.

TWENTY FIVE per cent of Neptune's manpower has gone to war. So have men from Water Departments all over the country. Those of us who remain behind must help these fighting men.

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PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. « « «

PROFESSIONAL DIRECTORY (*continued*)

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

*Fortnightly advertisers not in this issue.

★ Users of Marmon-Herrington Heavy-Duty and converted Ford *All-Wheel-Drive* trucks in the construction industries, logging, road-building and maintenance, utility, mining and oil field services can take genuine pride in the part *their* trucks are playing in building the Alcan Highway, the Texas-Illinois Pipe Line and other essential work at home and abroad. We are only sorry that more Marmon-Herringtons are not available to meet your demands. But Marmon-Herringtons have "donned the uniform" for the duration, and are helping "pass the ammunition" in Africa, Alaska, the Solomons, Russia, China, Australia, and New Zealand. Your War Bonds will help you buy more trucks when this war is won.

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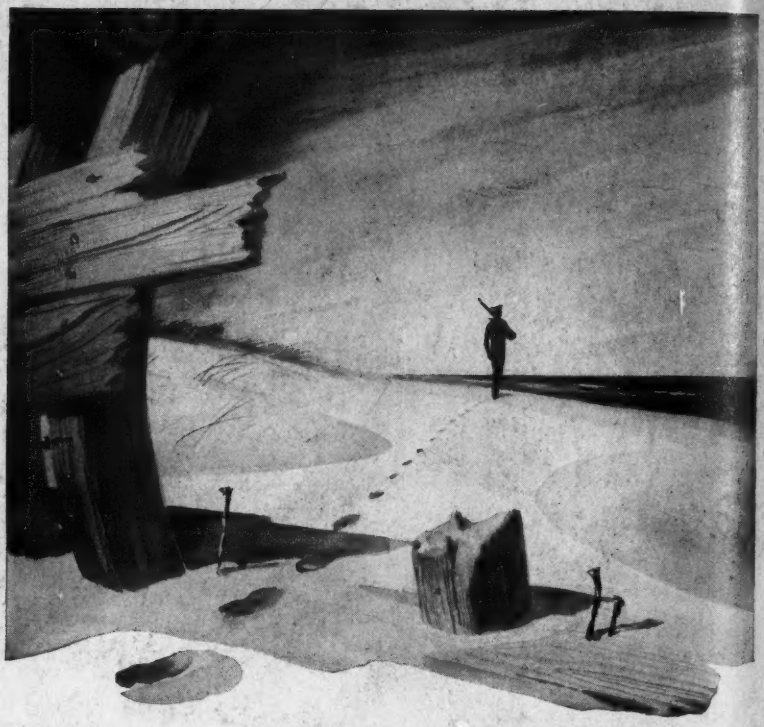

Steps that guard America!

He walks alone. His footsteps, plodding down some unnamed, silent beach, are a trail of protection between you and our Axis enemies.

Within the nation itself, there's a guardian's job we all can share. By caring for our tools and equipment, we make them last longer . . . and so save vital metals, and time, for greater war production. Storage batteries, for instance, last longer when you follow four simple rules of conservation. Obey them and you hit the Axis. Buy to Last and Save to Win!

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Exide Batteries of Canada, Limited, Toronto

STEPS THAT GUARD BATTERIES

1 Keep adding approved water at regular intervals. Most local water is safe. Ask if yours is safe.

2 Keep the top of the battery and battery container clean and dry at all times. This will assure maximum protection of the inner parts.

3 Keep the battery fully charged—to avoid excessive over-charge. A properly battery will last longer when charged to its proper voltage.

4 Record water additions, voltage, and gravity readings. Don't trust your memory. Write down a complete record of your battery's life history. Compare readings.

If you wish more detailed information, or have a special battery problem, don't hesitate to write to Exide. We want you to get the long life built into every Exide Battery. Ask for booklet Form 3225.